



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 140 and 146

#### 46 CFR Parts 4 and 109

[Docket No. USCG-2013-1057]

RIN 1625-AB99

### Marine Casualty Reporting on the Outer Continental Shelf

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes changing the reporting criteria for certain casualties that occur on foreign floating outer continental shelf (OCS) facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities. In this supplemental notice of proposed rulemaking (SNPRM), the Coast Guard revises the approach described in the notice of proposed rulemaking (NPRM) published in 2014 and responds to public comments about the NPRM. The Coast Guard proposes this action to harmonize the casualty-reporting regimes that apply to foreign and U.S. FOFs, MODUs, and vessels engaged in OCS activities and to account for the changes in technology on the OCS, since the casualty-reporting regulations were originally published in 1982. In addition, in response to public comment on the 2014 NPRM, the Coast Guard proposes to raise the property damage dollar threshold that triggers a casualty report from \$25,000 to \$75,000 for fixed facilities on the OCS because the original regulation setting the property damage threshold amount was issued in the 1980s and has not since been updated. Through this SNRPM, the Coast Guard would update Coast Guard regulations to keep up with technology, improve awareness of accident trends on the OCS, improve

safety on the OCS, and reduce the regulatory burden on operators of fixed OCS platforms.

**DATES:** Comments and related material must be received before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2013-1057 using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

See the “Public Participation and Request for Comments” portion of the

**SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

*Collection of information.* Submit comments on the collection of information discussed in section IX.D. of this preamble both to the Coast Guard’s online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) using their website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Comments sent to OIRA on the collection of information must reach OMB on or before the comment due date listed on their website.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this supplemental proposed rule, call or email CDR Amanda Fahrig, Office of Investigations and Casualty Analysis (CG-INV), telephone 202-372-1035, email, [Amanda.L.Fahrig@uscg.mil](mailto:Amanda.L.Fahrig@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

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## **I. Public Participation and Request for Comments**

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). To do so, go to <https://www.regulations.gov>, type USCG-2013-1057 in the search box and click “Search.” Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using [www.regulations.gov](http://www.regulations.gov), call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this SNPRM for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this SNPRM as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the [www.regulations.gov](http://www.regulations.gov) Frequently Asked Questions (FAQ) webpage. That FAQ page also explains how to subscribe for email alerts that will notify you when

comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to [www.regulations.gov](http://www.regulations.gov) will include any personal information you have provided. For more about privacy and submissions to the docket, see the Department of Homeland Security's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

*Public meeting.* We do not plan to hold a public meeting but we will consider doing so if public comments indicate that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

## **II. Abbreviations**

BLS	U.S. Bureau of Labor Statistics
BSEE	Bureau of Safety and Environmental Enforcement
CFR	Code of Federal Regulations
COI	Collection of information
DHS	Department of Homeland Security
FOF	Floating OCS facility
FR	<b>Federal Register</b>
IADC	International Association of Drilling Contractors
ICR	Information Collection Request
MCR	Marine casualty reports
MISLE	Marine Information for Safety and Law Enforcement
MODU	Mobile offshore drilling unit
NAICS	North American Industry Classification System
NMA	National Mariners Association
NOSAC	National Offshore Safety Advisory Committee
NPRM	Notice of proposed rulemaking
OCS	Outer continental shelf
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OOC	Offshore Operators Committee
SNPRM	Supplemental notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **III. Basis and Purpose**

Through Title 43 of the United States Code (U.S.C.), Section 1333(d)(1), Congress authorizes the Secretary of the Department in which the Coast Guard is operating to promulgate and enforce reasonable regulations to promote safety of life and property on the outer continental shelf (OCS), artificial islands, installations, and other devices permanently or temporarily attached to the seabed, and in waters adjacent to such artificial islands, installations, or devices. The Secretary delegates this authority to the Commandant of the Coast Guard through the Department of Homeland Security (DHS) Delegation No. 00170.1 (90), Revision No. 01.2.

In this supplemental notice of proposed rulemaking (SNPRM), the Coast Guard revises the proposals detailed in the notice of proposed rulemaking (NPRM) published on January 10, 2014 (79 FR 1780) to account for public comment as well as to simplify our explanation of the proposed regulatory changes. Through this SNPRM, we would collect more comprehensive casualty data to help protect the safety of life and property on the OCS, account for changes in technology, and improve the Coast Guard's maritime domain awareness.

In addition, through this SNPRM, the Coast Guard seeks to reduce the regulatory burden on fixed OCS facilities by raising the monetary property damage threshold amount for reporting a marine casualty from \$25,000 to \$75,000.

#### **IV. Regulatory History**

The Coast Guard published an NPRM titled "Marine Casualty Reporting on the Outer Continental Shelf" on January 10, 2014 (79 FR 1780). In the NPRM, we explained our rationale for changing the criteria under which foreign floating OCS facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities report marine casualties. While we propose most of the same criteria changes in this SNPRM, we utilize a different regulatory approach and offer additional proposals in response to public comment. This SNPRM completely replaces the 2014 NPRM and reference to the

NPRM should not be necessary to review and comment on the Coast Guard's proposed supplemental changes.

In section VII of this SNPRM, we also address the comments received in response to the NPRM.

## **V. Background**

The Coast Guard's regulations for OCS activities appear in Title 33 of the Code of Federal Regulations (CFR) subchapter N, parts 140 through 147. Regulations for reporting casualties on the OCS reside in 33 CFR part 146 – Operations. The terms “OCS facility,” “floating OCS facility,” “mobile offshore drilling unit,” and “fixed OCS facility” are defined in 33 CFR part 140 – General.

The owner, operator, or person in charge of a U.S. or foreign FOF, fixed OCS facility, MODU, or vessel must submit marine casualty reports (MCRs) in accordance with the applicable regulations. 33 CFR 146.30 – Notice of casualties, applies to U.S. and foreign OCS facilities including MODUs affixed to the seabed. 33 CFR 146.301 and 33 CFR 146.303 – Subpart D - Vessels - Notice of Casualty, apply to U.S. and foreign vessels, including MODUs not affixed to the seabed, engaged in OCS activities other than U.S. vessels already required to report marine casualties under 46 CFR subpart 4.05 – Notice of Marine Casualties and Voyage Records. In 1987 (52 FR 47526, 47536, December 14, 1987), the Coast Guard amended 46 CFR 109.411 – Notice and reporting of casualty, to require the owner, operator, or person in charge of a U.S. MODU must report accidents in accordance with 46 CFR part 4.

The criteria for reporting casualties are not identical between titles 33 and 46 of the CFR. The differences in these regulations result from the fact that the original title 33 CFR casualty reporting regulations published in 1956 (21 FR 900, February 9, 1956) applied to stationary artificial islands and fixed structures. In 1982 (47 FR 9366, March 4, 1982), the Coast Guard extended application of these regulations to floating facilities

and vessels engaged in OCS activities to implement amendments to the Outer Continental Lands Act (Pub. L. 95-372) and did not align the reporting criteria with 46 CFR part 4. Table 1 shows the significant reporting differences between titles 33 and 46 of the CFR. In particular, table 1 shows that, because of the evolution of the casualty reporting requirements on the OCS, U.S. MODUs are regulated by two different reporting regimes and that the casualty reporting requirements for foreign MODUs are less stringent than those for U.S. MODUs.

**Table 1: Coast Guard Marine Casualty Reporting Requirements**

<b>Topic</b>	<b>33 CFR part 146</b>	<b>46 CFR part 4</b>
Statutory authority	43 U.S.C. 1333	43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301
Applies to	U.S. and foreign FOFs, fixed OCS facilities, MODUs when in contact with the seabed, and vessels engaged in OCS activities.	U.S. vessels and MODUs in any waters. Foreign vessels in U.S. waters.
Reportable casualties	<p>No similar requirement for vessel in distress</p> <p>Death</p> <p>Injuries to 5+ persons</p> <p>Incapacitation &gt; 72 hours</p> <p>Property damage &gt; \$25,000</p> <p>Damage affecting the usefulness of primary lifesaving or firefighting equipment.</p>	<p>Vessel in distress or loss of communication with vessel.</p> <p>Death</p> <p>Injury</p> <p>No similar incapacitation requirement</p> <p>Property damage &gt; \$75,000</p> <p>Grounding</p> <p>Allision</p> <p>Loss of—</p> <ul style="list-style-type: none"> <li>• Main propulsion</li> <li>• Primary steering</li> <li>• Associated systems or components affecting maneuverability.</li> </ul> <p>Impairment of—</p> <ul style="list-style-type: none"> <li>• Vessel operation</li> <li>• Vessel components</li> </ul>

		<ul style="list-style-type: none"> <li>• Cargo</li> </ul> <p>Material or adverse impact to vessel's—</p> <ul style="list-style-type: none"> <li>• Seaworthiness</li> <li>• Fitness for service</li> <li>• Fitness for route</li> <li>• Examples—fire, flooding, failure of or damage to fire extinguishing, lifesaving, auxiliary power, and bilge pumping systems.</li> </ul> <p>Significant harm to the environment</p>
When to report	As soon as possible.	Immediately after addressing resultant safety concerns.
Subsequent reports	Within 10 days, describe possible contributing factors.	Within 5 days, written casualty report required.
Alcohol/drug testing	Required.	Required.

Under 33 CFR 146.30 (facilities) and 146.303 (vessels), the owner, operator, or person in charge of an FOF, a fixed OCS facility, a MODU (when in contact with the seabed of the OCS for exploration or exploitation of subsea resources), or a vessel when engaged in OCS activities, must report to the Coast Guard as soon as possible any casualties involving:

- Death;
- Injury to five or more persons in a single incident;
- Injury causing any person to be incapacitated for more than 72 hours;
- Damage affecting the usefulness of primary lifesaving or firefighting equipment; and
- Certain other property damage in excess of \$25,000.

The reporting party must follow the initial report in writing with a description of the factors that may have contributed to the casualty, including whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty. The



written report must be submitted on Coast Guard Form CG-2692 “Report of Marine Casualty, Commercial Diving Casualty, or OCS-Related Casualty” or in a narrative that supplies the same information as in the form. The CG-2692 form or narrative can be supplemented, as necessary by appended Forms CG-2692 A “Barge Addendum,” CG-2692B “Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service,” CG-2693C “Personnel Casualty Addendum,” and/or CG-2692D “Involved Persons and Witnesses Addendum.”<sup>1</sup>

U.S. vessels operating anywhere and foreign vessels operating within the navigable waters of the United States are subject to the marine casualty reporting requirements found in 46 CFR part 4. The regulations in 46 CFR part 4 also apply to U.S. MODUs operating on the OCS because 46 CFR 109.411 requires U.S. MODUs to report casualties in accordance with 46 CFR part 4. U.S. FOFs also report casualties under 46 CFR part 4. Title 46 CFR part 4 does not apply to foreign vessels, FOFs, or MODUs operating on waters beyond the navigable waters of the United States, except for certain foreign tank vessels operating in the Exclusive Economic Zone. See 46 CFR 4.05-2(b).

Under 46 CFR part 4, a vessel’s owner, agent, master, operator, or person-in-charge must report to the Coast Guard, casualties involving:

- Allision;
- Collision;
- Explosion;
- Failures or occurrences, regardless of cause, which impair any aspect of a vessel’s operation, components, or cargo;
- Fire;

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<sup>1</sup> The CG-2692 form and other CG-2692 addendum forms are accessible at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Office-of-Investigations-Casualty-Analysis/2692-Reporting-Forms-NVIC-01-15/>.

- Flooding;
- Foundering;
- Grounding;
- Impacts to vessel seaworthiness or fitness for service or route;
- Loss of life, or injury requiring professional medical treatment;
- Loss of main propulsion or vessel maneuverability;
- Property damage in excess of \$75,000;
- Reduction or loss of electrical power, propulsion, or steering capability;
- Significant harm to the environment;
- Stranding; or
- Vessel in distress or loss of communication with vessel.

The initial MCR required under 46 CFR 4.05-1 must be followed within 5 days by a written report on the CG-2692 form. See 46 CFR 4.05-10. Additionally, under 46 CFR 4.05-12, the Coast Guard requires the marine employer to determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty. This information can be included on the CG-2692 form or, as necessary, on a CG-2692B form. Reports for closed investigations of reportable marine casualties investigated by the US Coast Guard from 2002 to present are publicly available at the USCG Maritime Information Exchange<sup>2</sup>.

During their casualty analysis, the members of the marine board of investigation for the foreign MODU *Deepwater Horizon* casualty<sup>3</sup> noted the inconsistencies between 33 CFR part 146 and 46 CFR part 4. In their accident report, the board members emphasized the disparate casualty reporting and chemical testing requirements between

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<sup>2</sup> <https://cgmix.uscg.mil/IIR/Default.aspx>. Users should select “Search IIR” in the top left corner.

<sup>3</sup> Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the MOBILE OFFSHORE DRILLING UNIT *DEEPWATER HORIZON* — In the GULF OF MEXICO April 20–22, 2010. See docket USCG-2013-1057.

U.S. MODUs and foreign MODUs operating beyond navigable waterways of the United States. U.S. FOFs, MODUs, and vessels engaged in OCS activities report casualties under 46 CFR part 4, whereas foreign FOFs, MODUs, and vessels engaged in OCS activities report casualties under 33 CFR part 146. The reporting criteria in 33 CFR part 146 includes fewer types of casualties than the reporting criteria in 46 CFR part 4. Thus, foreign FOFs, foreign MODUs, and foreign vessels engaged in OCS activity have a less comprehensive casualty-reporting regime than their U.S. counterparts. These differences are important in the offshore oil and gas exploration, development, and production industry because a lack of casualty data could hamper early detection of risks. As the coastal State with jurisdiction, we propose that it is the same casualty reporting standards of foreign vessels, MODUs, and floating facilities that engage in OCS activities as their U.S. counterparts. Additionally, having a uniform reporting standard for both U.S. and foreign FOFs, MODUs, and vessels that engage in OCS activities equalizes the regulatory burden.

Further, the Coast Guard believes the casualty reporting regulations in 33 CFR parts 140 and 146 lag both technological developments and present-day operations in the OCS industry, because the Coast Guard has not updated marine casualty reporting requirements on the OCS since 1982. At that time, MODUs affixed to the seabed, such as jack-up units, conducted most of the oil and natural gas exploration on the OCS in waters to about 500 feet deep. Similarly, oil and gas companies erected fixed facilities to produce oil and natural gas because these types of facilities are feasible to the same 500-foot water depth.

In the past 30 years, the use of floating MODUs and facilities has become commonplace as exploration and production activities moved into deeper waters of the OCS. Today, FOFs and MODUs operate in waters up to 8,000 feet deep, much further offshore, and distant from emergency assistance. These floating facilities and MODUs

are more like ocean-going vessels than fixed OCS facilities and MODUs grounded to the seabed.

Therefore, in this SNPRM, as in the NPRM, the Coast Guard proposes changing the criteria by which foreign FOFs, MODUs, and vessels engaged in OCS activities report casualties. This action would improve collection and analysis of casualty information on the OCS to help the Coast Guard and industry develop policies and procedures that prevent future marine casualties.

In this SNPRM, the Coast Guard also proposes raising the dollar threshold for reporting property damage under 33 CFR part 146. The Coast Guard established the property damage threshold of \$25,000 in 33 CFR part 146 through a final rule that published on March 4, 1982 (47 FR 9366). The \$25,000 threshold has not been changed in over 30 years and has not kept pace with inflation. Over time, this has resulted in reports of a greater number of casualties involving relatively minor property damage.

Until recently, a similar situation existed with reporting property damage under 46 CFR part 4. In that case, to account for inflation, the Coast Guard published a final rule titled “Marine Casualty Reporting Property Damage Thresholds” on March 19, 2018 (83 FR 11889) (hereafter the 2018 Final Rule). In that final rule, the Coast Guard raised the property damage reporting criteria in 46 CFR part 4 from \$25,000 per incident to \$75,000 based on the CPI-U increase between 1980 (82.408) and 2016 (240.007).<sup>4</sup> The Coast Guard sees no reason why the property damage threshold in 33 CFR part 146 should be different than the threshold in 46 CFR part 4. Accordingly, through this supplemental proposed rule, we would raise the reportable monetary property damage threshold amount to \$75,000 in 33 CFR part 146. Raising the threshold to \$75,000 would only apply to fixed OCS facilities because, through this supplemental proposed rule, FOFs,

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<sup>4</sup> 2016 was the most recent full year of data available at the time of the analysis for the final rule (83 FR 11889). See CPI Detailed Report, Data for December 2016, Table 24, <https://www.bls.gov/cpi/cpid1512.pdf>.

MODUs, and vessels operating on the OCS would be required to report casualties under the criteria in 46 CFR part 4, which has already been raised to \$75,000 for property damage.

## **VI. Discussion of the Supplemental Proposed Rule**

Based on the comments we received to our 2014 NPRM, we are proposing changes to that proposal requiring foreign FOFs, MODUs, and vessels engaged in an OCS activity to report casualties under 46 CFR part 4.

The comments we received about the 2014 NPRM led us to decide on two substantive changes to the proposals in the 2014 NPRM. First, we decided not to propose changing the casualty reporting requirement for fixed OCS facilities. Second, we decided to propose increasing the property damage dollar threshold to \$75,000 and align title 33 of the CFR with title 46 of the CFR. These changes are fully discussed in sections V, VI, and VIII of this SNPRM.

These substantive changes to our proposals in the 2014 NPRM necessitate we re-propose our regulatory changes through this SNPRM. As discussed above, this SNPRM completely replaces the 2014 NPRM and reference to the NPRM should not be necessary to review and comment on the Coast Guard's proposed supplemental changes. Consequently, the Coast Guard proposes the following amendments to the CFR through this SNPRM.

### *33 CFR 140.10 – Definitions.*

We propose adding dynamically positioned floating facilities to the definition of *floating OCS facility*. The dynamic positioning systems in use on the OCS today did not exist when the current regulations were published in 1982. At that time, secure anchoring was the only reliable method of maintaining station. With modern controls, computers, and Global Positioning Systems, FOFs can safely remain on station without the need for complex anchoring systems. We did not propose this change in the 2014 NPRM because,

at that time, the Coast Guard was developing two related rulemakings that addressed standards for dynamic positioning systems. These were titled “Outer Continental Shelf Activities” (USCG-1998-3868) (withdrawn on September 19, 2019, *see* 83 FR 47324) and “Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities with Dynamic Positioning Systems” (USCG-2014-0063) (withdrawn on May 20, 2022, *see* 87 FR 30849).

*33 CFR 140.201 – General.*

We propose removing the specific types of casualties listed in paragraphs (a) through (c) and, instead, referencing 33 CFR 146.30 and 46 CFR part 4, which apply to all fixed OCS facilities and floating OCS facilities, MODUs, and vessels, respectively. We retain the requirements of paragraphs (d) and (e) and re-designate them as (c) and (d).

*33 CFR 140.203 – Investigations procedures.*

We propose updating *U.S. Geological Survey* to *U.S. Bureau of Safety and Environmental Enforcement*. This proposed change is an administrative correction because the U.S. Geological Survey no longer conducts investigations of casualties on the OCS.

*33 CFR 146.30 – Notice of casualties.*

We propose applying the casualty reporting criteria listed in this section to FOFs only. See the discussion of proposed 46 CFR 4.03-1 below, in which we propose to require the owner, operator, or person in charge of FOFs, MODUs, and vessels engaged in an OCS activity to report casualties under 46 CFR part 4. We also propose to raise the dollar threshold for reporting property damage from \$25,000 per incident to \$75,000. In addition, we propose removing the phrase “...drydocking or demurrage...” in paragraph (d), as these terms do not apply to a fixed OCS facility.

Finally, in 33 CFR 146.30, we propose to require the owner, operator, or person in charge of foreign FOFs, MODUs, and vessels engaged in an OCS activity to include in

the written casualty report required under 46 CFR 4.05-12 information relating to alcohol or drug involvement. This is not a new requirement as it is currently included in 33 CFR 146.35 that applies collectively to FOFs and fixed OCS facilities. We repeat it in the proposed 33 CFR 146.30 because this section would now distinguish between reporting requirements for fixed and floating facilities and to ensure FOFs reporting under 46 CFR part 4 are aware of their continued responsibility to include drug and alcohol information.

*33 CFR 146 subpart D, Vessels – Notice of Casualty.*

We propose removing subpart D, Vessels—Notice of Casualty, in 33 CFR part 146 because, through this proposed change, the vessels currently reporting under subpart D requirements would report casualties under the provisions of 46 CFR part 4. Accordingly, we also propose re-designating the current subpart E, Vessels—Safety and Security Notice of Arrival as the new subpart D.

*46 CFR 4.01-1 – Scope of regulation.*

We propose revising the existing text for clarity.

*46 CFR 4.01-3 – Reporting exclusion.*

We propose exempting the owner, operator, or person in charge of FOFs, and MODUs from casualty reporting requirements for deaths or injuries of shipyard or harbor workers when the casualty does not result from either a reportable casualty or a reportable equipment failure and the incident is reportable to the Occupational Safety and Health Administration (OSHA) under 29 CFR part 1904.

*Subpart 46 CFR 4.03 – Definitions*

We propose adding § 4.03-0, Definitions in this subpart, to explain that subpart 4.03 contains terms defined for purposes of part 4.

*46 CFR 4.03-1 – Marine casualty or accident.*

We propose amending the definition of *Marine casualty or accident* to include casualties on an FOF, MODU, or vessel when they are engaged in an OCS activity. We

would also revise the existing list of events included in the definition of *Marine casualty or accident* for clarity.

*46 CFR 4.03-2 – Serious marine incident.*

We propose amending the definition of *Serious marine incident* to include incidents on an FOF, MODU, or vessel when they are engaged in an OCS activity.

*46 CFR 4.03-65 – Significant harm to the environment.*

We propose amending the definition of *Significant harm to the environment* to include incidents on an FOF, MODU, or vessel when they are engaged in an OCS activity.

*46 CFR 4.03-80 – Outer Continental Shelf (OCS).*

In this new section, we propose adding the definition for *Outer continental shelf (OCS)* from 33 CFR 140.10.

*46 CFR 4.03-85 – OCS Activity.*

In this new section, we propose adding the definition for *OCS activity* from 33 CFR 140.10.

*46 CFR 4.03-90 – Floating OCS facility.*

In this new section, we propose adding the revised definition for *Floating OCS facility* from 33 CFR 140.10.

*46 CFR 4.03-95 – Mobile Offshore Drilling Unit (MODU).*

In this new section, we propose adding the definition for *Mobile offshore drilling unit (MODU)* from 33 CFR 140.10.

*46 CFR Subpart 4.04 – Notice of Potential Vessel Casualty.*

We propose broadening the applicability of reporting requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity.

*46 CFR Subpart 4.05 – Notice of Marine Casualty and Voyage Records.*



We propose broadening the notice and record retention requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity.

*46 CFR Subpart 4.06 – Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service.*

We propose broadening the post-casualty chemical testing requirements to include all FOFs and MODUs when engaged in an OCS activity. We also propose adding a new paragraph 4.06-15(b)(3) allowing the owner, operator, or person in charge of an FOF, MODU, or vessel to request an alternative drug testing process in lieu of the drug testing requirements in 49 CFR part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs, referenced in 46 CFR 4.06-15.

*46 CFR 4.07-45 – Foreign units of Coast Guard, investigation by.*

We propose broadening the applicability to all FOFs and MODUs when engaged in an OCS activity.

*46 CFR 109.411 – Notice and reporting of casualty.*

We propose amending the existing text to provide clarity regarding the persons responsible for providing notice and the reporting of marine casualties involving U.S. MODUs. This proposed change is also consistent with the language in subpart 4.05 regarding the persons responsible for the notice and reporting of marine casualties.

## **VII. Discussion of Comments on the 2014 NPRM**

In the 2014 NPRM, the Coast Guard proposed requiring that the owners, operators, or person-in-charge of all U.S. and foreign fixed OCS facilities, FOFs, MODUs, and vessels engaged in an OCS activity report casualties under the criteria of 46 CFR part 4 instead of 33 CFR part 146.

We received seven responses with comments about the NPRM including one response from a Federal agency, one response from a Federal advisory committee, four

responses from industry organizations, and one response from the general public. We summarize the comments and our responses in the paragraphs that follow.

The Department of the Interior Bureau of Safety and Environmental Enforcement (BSEE) and the Coast Guard share jurisdiction on the OCS. After reviewing the NPRM, BSEE recommended we retain casualty reporting for fixed OCS platforms in 33 CFR subchapter N. The Coast Guard concurs and does not propose to change the reporting procedures for fixed OCS facilities in this SNPRM except to raise the dollar threshold for reporting property damage.

We received five comments from the National Offshore Safety Advisory Committee (NOSAC). NOSAC is a Federal Advisory Committee, subject to the Federal Advisory Committee Act (Title 5 U.S.C. Appendix). The Coast Guard regularly consults NOSAC on “matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard.” The Coast Guard approved a task statement for NOSAC to address the NPRM and NOSAC completed their report on September 24, 2014. A copy of the NOSAC report is included in the rulemaking docket.<sup>5</sup>

The members of NOSAC asserted that some of the vessel populations we used in the NPRM’s cost and benefit analysis were underestimated, but not to a degree that would significantly affect the outcomes of our cost and benefit estimates. The Coast Guard notes NOSAC’s comment, however, we do not plan to revise our estimate methodology because vessel and facility populations fluctuate on the OCS depending on industry dynamics and the number and frequency of new leases. The data used in this SNPRM reflects changes in the population since 2014 that make the data provided in NOSAC’s comment out of date. In addition, we added detail on the affected population

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<sup>5</sup> A copy of NOSAC’s report is included in the rulemaking docket, [www.regulations.gov/document/USCG-2013-1057-0009](http://www.regulations.gov/document/USCG-2013-1057-0009).

to address concerns that the population of industrial vessels in the Marine Information for Safety and Law Enforcement (MISLE) database undercounts the affected population. We believe the numbers in our analyses represent the affected vessel and OCS facility populations because they are taken from the most current information about FOFs, MODUs, and vessels working on the OCS.

The members of NOSAC also asserted that we underestimated collection of information costs by not including the effort of a company's internal review of an accident report prior to submission. NOSAC submitted a similar comment to the NPRM we published on raising the property damage dollar threshold amount in 46 CFR part 4, which we discussed in the subsequent 2018 Final Rule. The Coast Guard agrees with this comment and, in this SNPRM, we increased our estimated collection of information costs by 10 percent of the casualty reports to account for internal company review required by some of the more complex reports, as was done in the 2018 Final Rule.

The members of NOSAC also urged us to raise the property damage reporting threshold from \$25,000 per incident to at least \$100,000. We partially agree and propose in this SNPRM to raise the dollar threshold amount in 33 CFR 146.30 to \$75,000. As previously mentioned, through our 2018 Final Rule, we raised the property damage reporting criteria in 46 CFR part 4 from \$25,000 per incident to \$75,000 to account for inflation. We do not see any reason why the property damage threshold in 33 CFR part 146 should be different than the threshold in 46 CFR part 4. Accordingly, for the same reasons that we increased the property damage threshold amount in 46 CFR part 4, for consistency in accident reporting, and in response to comments, we propose to make the same increase to the dollar threshold amount in 33 CFR part 146.

In addition to the comments we received from BSEE and NOSAC, we received six public comments on the NPRM. These comments came from two industry groups, one company, one mariner's association, one student, and one unaffiliated person.

The National Mariners Association (NMA)<sup>6</sup> expressed its longstanding concerns about the failures of employers to submit accident reports in a timely manner. We understand the association's concern as timely intervention is only possible when casualty reports are promptly reported. It is for this reason that Coast Guard regulations prescribe when casualty reports must be submitted. Violations of the Coast Guard's casualty reporting regulations, whether in 46 CFR part 4 or 33 CFR part 146, are subject to civil penalties, as set forth in 46 U.S.C. 6103 and 43 U.S.C. 1350, respectively.

The Offshore Operators Committee (OOC),<sup>7</sup> generally supported the proposed rule and noted that the Coast Guard did not seek to harmonize accident reporting requirements between the Coast Guard and BSEE through the NPRM.

The Coast Guard and BSEE are aware that some accidents lead to dual investigations. These investigations are based on accident information collected through separate Office of Management and Budget (OMB) approved Information Collection Requests (ICRs) that are not identical. In this SNPRM, the Coast Guard would update the ICR governing accident information collection under 46 CFR part 4 to apply to foreign FOFs, MODUs, and vessels operating on the OCS. However, this action would not eliminate the possibility of dual investigations or address the differences between the Coast Guard and BSEE's ICRs.

In a joint publication titled, "United States Coast Guard & Bureau of Safety and Environmental Enforcement Joint Activity Summary 2017-2018,"<sup>8</sup> the Coast Guard and BSEE describe how they collaborate on OCS inspections and investigations. In 2017, the Coast Guard and BSEE established a memorandum of agreement titled "BSEE/USCG MOA: OCS-05" regarding incident notification and investigations.<sup>9</sup> This memorandum

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<sup>6</sup> <https://www.nationalmariners.us>

<sup>7</sup> <https://www.theooc.org>

<sup>8</sup> <https://www.bsee.gov/sites/bsee.gov/files/bsee-uscg-joint-summary-final-5-1-2018.pdf>

<sup>9</sup> <https://www.bsee.gov/sites/bsee.gov/files/interagency-agreements-mous-moas/bsee-uscg-moa-ocs-05-18jan2017.pdf>

details jurisdiction, responsibilities, enforcement, training, regulatory coordination, and information sharing. While sharing accident information is hampered by differences in information technology infrastructure, software, and security requirements, the memorandum explains how the Coast Guard and BSEE have agreed to collaborate as much as possible. The BSEE and Coast Guard Prevention Working Group also continues to seek solutions that would lead to closer cooperation and reciprocity.

In its comments, the OOC also criticized the Coast Guard for continued reliance on a burdensome paper-based accident reporting system. The Coast Guard agrees that we do not have a fully online accident reporting system. However, the fillable Coast Guard accident report forms (CG-2692 series) are available online at [www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/INV/docs/CG\\_2692.pdf?ver=2019-07-24-113027-740](http://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/INV/docs/CG_2692.pdf?ver=2019-07-24-113027-740) and can be submitted via email to the appropriate Coast Guard office. BSEE regulations in 30 CFR 250.190(b) also allow submission of a CG-2692 form to fulfill its reporting requirements if the narrative contains the required information.

The OOC, NMA, and International Association of Drilling Contractors (IADC),<sup>10</sup> also expressed concerns, from a resource standpoint, about the Coast Guard's ability to adequately investigate marine casualties on the OCS. These three organizations remarked that additional casualty reports will overwhelm the Coast Guard's investigative resources. In addition, they believe the Coast Guard's assignment practices lead to frequent turnover and the lack of experienced personnel often results in inconsistencies in enforcement actions.

We believe this SNPRM would not significantly affect our inspection and investigation resources because we estimate the number of additional casualty reports submitted for foreign FOFs, MODUs, and vessels under 46 CFR part 4 would be small,

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<sup>10</sup> <https://www.iadc.org>

as shown in the regulatory analysis below. Additionally, we estimate this increase in the number of casualty reports would be offset partially by a decrease in reports from fixed OCS facilities resulting from our proposed increase from \$25,000 to \$75,000 as the threshold for reporting property damage. While we note the commenters' concerns about Coast Guard training and assignment practices, those issues are beyond the scope of this rulemaking, and we do not propose to address them in this SNPRM. The Coast Guard addresses the potential for inconsistencies in enforcement actions through our current employment policies and procedures. We hold general training programs, maintain an extensive portfolio of guidance and policy preferences, and conduct ongoing oversight. We also assign qualified civilian personnel in lieu of uniformed members, who are subject to transfers, as investigating officers to help maintain consistency in accident investigation actions and analyses.

In addition to the comments discussed above, the IADC expressed support for the 2014 proposed rule and commended the Coast Guard for its continuing collaboration with BSEE to alleviate duplicate reporting. The IADC also recommended the Coast Guard confirm that same or similar Department of Labor exemption, which applies to health information in "Occupational Safety and Health Administration form 300, Log of Work-Related Injuries and Illnesses," should apply to marine casualty reporting as well. The Coast Guard notes this concern and confirms that we safeguard personal health information in accordance with Coast Guard policy and the Department of Health and Human Service's Health Insurance Portability and Accountability Act Privacy regulations.<sup>11</sup> In this SNPRM we are not proposing any changes to the regulations related to this topic.

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<sup>11</sup> 45 CFR part 160 and subparts A and E of 45 CFR part 164.

The IADC also asked for clarification of the proposed 46 CFR 4.03-1(b) in the NPRM because it implied that a marine casualty can occur only when an event is caused by or involves a vessel and, in that case, conflicts with the proposed 46 CFR 4.03-1(a).

We agree that the NPRM's language for proposed 46 CFR 4.03-1(b) was confusing given our goal is to require FOFs and MODUs to report casualties under the more comprehensive reporting criteria contained in 46 CFR part 4. In the NPRM, we proposed including FOFs and MODUs in the definition of "vessel" for the purposes of that proposed rule. We decided that this approach could cause confusion and we seek to resolve that issue in this SNPRM by proposing revisions to 33 CFR 146.30 and 146.301 and 46 CFR 4.03-1 that distinctly delineate the regulation's applicability to vessels, FOFs, and MODUs.

One public commenter expressed support for the Coast Guard's goal of collecting better casualty information on the OCS. The Coast Guard appreciates this support.

Another public commenter expressed the opinion that the proposed rule would have no significant use or benefit because it does not help other important national interests such as poverty or the national debt. The commenter stated that casualty reporting to help measure the kind of marine life that is being killed is important in certain respects, and the commenter further stated that the Coast Guard should not undertake rules that collect casualty data on marine life because the Coast Guard's mission is to provide reasonably free, safe, and unobstructed passage for waterborne traffic while considering the needs of land transportation. We believe the commenter may be under a misimpression that the phrase "marine casualty" in the NPRM refers to or includes the deaths of marine life. The Coast Guard acknowledges this comment and wishes to clarify that the definition of marine casualty does not include the death of marine life.

## **VIII. Differences between the NPRM and SNPRM**

In this SNPRM, we no longer propose that fixed OCS facilities would report casualties under the criteria of 46 CFR part 4 and instead we propose they continue to report casualties in accordance with 33 CFR parts 140 and 146. In the 2014 NPRM, we proposed to move all OCS facilities marine casualty reporting requirements from 33 CFR subchapter N to 46 CFR part 4. In this SNPRM, we have moved away from that approach and instead use the term “Floating OCS Facility” to differentiate between floating and fixed facilities.

The 46 CFR part 4 regulations are vessel casualty regulations for floating entities and provide appropriate regulations for floating OCS facilities but not necessarily for fixed OCS facilities for the following reasons. Floating OCS facilities experience similar types of accidents as other vessels, such as flooding, loss of stability, and inability to maintain station. Therefore, we believe it is appropriate to continue to propose that floating OCS facilities report casualties under 46 CFR part 4. However, fixed OCS facilities do not experience substantially similar casualties. In addition, as explained in Section VII of this supplemental proposed rule, BSEE recommended we do not change the reporting criteria for fixed OCS facilities because they are sufficient. In agreement with BSEE’s recommendation, the fixed facilities marine casualty reporting requirements would remain in subchapter N because the current accident reporting regime for fixed OCS facilities is sufficient for collecting accident data and responding to trends in that population. The 33 CFR part 140 and 146 are more relevant and tailored to fixed platforms and facilities. We concur that the regulations in 33 CFR parts 140 and 146 are more appropriate for fixed OCS facilities. Therefore, we proposed that fixed OCS facilities would continue to report casualties under 33 CFR parts 140 and 146, and not 46 CFR part 4.

In this SNPRM, we propose revising the definition of *Floating OCS facility* in 33 CFR 140.10 by adding language to include dynamically positioned facilities. We



propose this change to update our regulations with technology changes on the OCS since the regulations were published in 1982. At that time, complex anchoring systems were the only reliable means of keeping floating facilities on location. Modern controls, computers, and Global Positioning Systems have replaced anchoring systems for station keeping.

In this SNPRM, we propose revisions to 33 CFR 146.30 to raise the dollar amount threshold for reporting property damage from \$25,000 to \$75,000 to account for inflation over the past 30-plus years and to help reduce the regulatory burden on fixed OCS facilities.

In this SNPRM, we are not proposing to remove 33 CFR 146.30 through 146.45, because we are no longer proposing to combine them in 33 CFR 146.50.

In this SNPRM, we no longer seek to add a new 33 CFR 140.50, because our SNPRM proposal to have FOFs, MODUs, and vessels engaged in OCS activities report casualties under 46 CFR part 4 makes it unnecessary.

In the 2014 NPRM, we proposed adding to 46 CFR part 4 a new definition for *OCS unit* that included any OCS facility, vessel, rig, platform, or other vehicle or structure. We also proposed adding another new definition in 46 CFR part 4 for the term *vessel* that included *OCS unit*. We proposed this approach as a convenient device to avoid writing “facility, vessel, rig, platform or other vehicle or structure” each time they were needed in the regulatory text. However, after reviewing the comments on the NPRM, we ultimately abandoned this approach because the resulting definition of *vessel* in 46 CFR part 4 would conflict with the statutory definition found in 1 U.S.C. 3: of “...every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” Therefore, in this SNPRM, we propose, instead, adding in 46 CFR part 4 the title 33 of the CFR definitions for *OCS activity*, *floating OCS facility*, and *MODU* and writing out how this SNPRM applies to each.

In this SNPRM, we propose to revise the language in 46 CFR 109.411 to provide clarity regarding the persons responsible for providing notice and reporting of marine casualties involving U.S. MODUs. We did not propose this change in the NPRM.

The differences between the NPRM and SNPRM are summarized in table 2.

**Table 2: Summary of Changes from NPRM to SNPRM**

	<b>NPRM</b>	<b>SNPRM</b>
Affected Population	Fixed OCS facilities report under 46 CFR part 4.	Fixed OCS facilities remain under 33 CFR parts 140 and 146.
Affected Population Description	NPRM created a term “OCS Units” in an attempt to leverage a consolidated definition.	SNPRM separately defines “vessel engaged in OCS activity,” “floating OCS facility,” and “MODU.”
Property Damage Threshold	Threshold in title 33 of the CFR listed as \$25,000.	Threshold raised to \$75,000 to be consistent with prior update to 46 CFR part 4.

## **IX. Regulatory Analyses**

We developed this SNPRM after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This SNPRM is a significant regulatory action, although not economically significant, under section 3(f) of Executive Order 12866. The Office of Management and

Budget (OMB) has reviewed it under that Executive order. Section 6(a)(3) of Executive Order 12866 requires an assessment of potential costs and benefits. We fully explain our assessment in the remaining paragraphs of this section.

In this SNPRM, as in the NPRM, the Coast Guard proposes to amend regulations in which marine casualties, under 33 CFR subchapter N, are reported for foreign vessels, MODUs, and floating facilities operating on the OCS. The proposed amendments would align casualty reporting requirements for U.S. and foreign FOFs, MODUs, and vessels engaged in an OCS activity under the 46 CFR part 4 reporting requirements. In addition to the change from the NPRM, the Coast Guard proposes in this SNPRM, to update the property damage threshold for reporting under 33 CFR part 146 to align with the threshold in 46 CFR part 4, which was raised in the 2018 Final Rule.<sup>12</sup>

The proposed threshold change addresses a concern raised by NOSAC in its comment on the 2014 NPRM, that the property damage threshold for casualty reporting should be increased from \$25,000 to account for inflation.<sup>13</sup> Acting on that comment, the Coast Guard updated the threshold under 46 CFR part 4 to \$75,000 in the 2018 Final Rule and would propose to do the same under title 33 of the CFR in this SNPRM.

The 2018 Final Rule also adjusted the burden hours of the ICR for MCRs in response to NOSAC's comment, to account for review of a draft MCR by company management and legal counsel. This SNPRM continues to use the updated burden implemented in the 2018 Final Rule to account for additional review of some casualty reports, this change was not initially included in the 2014 NPRM.<sup>14</sup> We added additional detail on the affected population since the NPRM to address NOSAC's concerns that the population of industrial vessels in the MISLE database undercounts the affected

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<sup>12</sup> "Marine Casualty Reporting Property Damage Thresholds" (83 FR 11889, March 19, 2018).

<sup>13</sup> NOSAC Approved Final Report - Marine Casualty Reporting, September 24, 2014, [www.regulations.gov/document?D=USCG-2013-1057-0009](http://www.regulations.gov/document?D=USCG-2013-1057-0009).

<sup>14</sup> Ibid.

population, particularly FOFs.<sup>15</sup> The affected population numbers have also been reviewed by the floating OCS facilities working group to ensure accuracy. The impacts of the proposed changes of this SNPRM are summarized in table 3.

**Table 3: Summary of the Impacts of the SNPRM**

<b>Category</b>	<b>Summary</b>
Applicability	Requires marine casualties, involving foreign FOFs, MODUs, and vessels engaged in OCS activities, to be reported under 46 CFR part 4 as consistent with U.S. FOFs, MODUs, and vessels. Raises the monetary reportable marine casualty dollar threshold in 33 CFR part 146 from \$25,000 to \$75,000 to align with 46 CFR part 4.
Affected Population	For marine casualties on FOFs, MODUs, and vessels currently required to be reported under 33 CFR part 146: <ul style="list-style-type: none"> <li>• 588 foreign FOFs, MODUs, and vessels would shift reporting to 46 CFR part 4.</li> <li>• 1,754 fixed platforms would continue to report under 33 CFR part 146.</li> </ul>
Costs (2019 dollars, 7% Discount Rate)	Cost for U.S. Government: 10-Year: \$25,806 Annualized: \$3,674  Cost for Foreign Industry: 10-Year: \$95,039 Annualized: \$13,531  On average, we anticipate an increase of 78 marine casualty reports annually.
Cost Saving to Industry (2019 dollars, 7% Discount Rate)	Savings for U.S. industry: 10-Year: (\$8,389) Annualized: (\$1,194)  Savings for Foreign Industry: 10-Year: (\$11,542) Annualized: (\$1,643)  Reduced reporting from raising the property damage threshold for a reportable marine casualty.
Net Cost (2019 dollars, 7% Discount Rate)	Net Cost for U.S. Government and Industry: 10-Year: \$17,417

<sup>15</sup> Ibid.

	Annualized: \$2,480  Net Cost for Foreign Industry: 10-Year: \$83,497 Annualized: \$11,888
Unquantified Benefits	Increases the Coast Guard's domain awareness through harmonization of marine casualty reporting requirements across CFR parts. Potential for risk mitigation if problems are mitigated before they develop into more serious accidents.

This SNPRM has been determined a significant regulatory action under Executive Order 12866. Therefore, in accordance with OMB Circular A-4, we have prepared an accounting statement showing the classification of impacts associated with this SNPRM.<sup>16</sup> The first A-4 in table 4 is the total U.S. cost, including the annualized cost to the US government, \$3,674, and the annualized cost saving to US industry, \$1,194 for a total annualized monetized cost of \$2,480. The second A-4 shown in table 5 is the total cost of the rule including net annualized foreign costs \$11,888, for an annualized monetized cost of \$14,368.

**Table 4: OMB A-4 Accounting Statement for US Costs to Industry and Government  
2021-2031 Period of Analysis — 2019 Dollars**

Category	Primary Estimate		Minimum Estimate		High Estimate		Source
Benefits							
Annualized monetized benefits	None	7%	None	7%	None	7%	RA
	None	3%	None	3%	None	3%	
Annualized quantified, but non-monetized, benefits	None						RA
Unquantifiable Benefits	Increased domain awareness from additional MCRs. Potential for risk mitigation by increasing awareness of early accident indicators.						RA
Cost							
Annualized monetized cost	\$2,480	7%	None	7%	None	7%	RA
	\$2,480	3%	None	3%	None	3%	RA
Annualized quantified, but non-monetized, cost	None						RA

<sup>16</sup> [www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf](http://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf).

Qualitative (unquantified) cost				RA
Transfers				
Annualized monetized	Not calculated	Not calculated	Not calculated	RA
From who to whom?				RA
Annualized monetized transfers (“off-budget”)	None	None	None	
From who to whom?	None	None	None	
Miscellaneous Analyses/Category				
Effects on State, local, and tribal governments	None	None	None	
Effects on small businesses	Will not have a significant economic impact on a substantial number of small entities			RA
Effects on wages	None	None	None	
Effects on growth	No determination	No determination	No determination	

**Table 5: OMB A-4 Accounting Statement for All Costs including Foreign 2021-2031  
Period of Analysis — 2019 Dollars**

Category	Primary Estimate		Minimum Estimate		High Estimate		Source
Benefits							
Annualized monetized benefits	None	7%	None	7%	None	7%	RA
	None	3%	None	3%	None	3%	
Annualized quantified, but non-monetized, benefits	None						RA
Unquantifiable Benefits	Increased domain awareness from additional MCRs. Potential for risk mitigation by increasing awareness of early accident indicators.						RA
Cost							
Annualized monetized cost	\$14,368	7%	None	7%	None	7%	RA
	\$14,368	3%	None	3%	None	3%	RA
Annualized quantified, but non-monetized, cost	None						RA
Qualitative (unquantified) cost							RA
Transfers							
Annualized monetized	Not calculated		Not calculated		Not calculated		RA
From who to whom?							RA
Annualized monetized transfers (“off-budget”)	None		None		None		
From who to whom?	None		None		None		
Miscellaneous Analyses/Category							
Effects on State, local, and tribal governments	None		None		None		
Effects on small businesses	Will not have a significant economic impact on a substantial number of small entities						RA
Effects on wages	None		None		None		
Effects on growth	No determination		No determination		No determination		

**Affected Population**

As in the NPRM,<sup>17</sup> the affected population comprises all foreign FOFs identified in the MISLE database as floating production systems and floating production storage offloading vessels, as well as various types of industrial vessels,<sup>18</sup> MODUs, and lift boats. Table 6 shows detail on the affected population to address concerns that the population of industrial vessels in the MISLE database undercounts the affected population. Since the 2014 NPRM, MISLE now distinguishes FOFs, so we listed those separately from industrial vessels to show that the population is not undercounted. We excluded types that did not have an ocean-going route under the assumption that they would not operate on the OCS. In table 5, U.S. fixed OCS facilities are listed as an affected population only because of SNPRM proposal to update the property damage threshold for reporting a marine casualty, no other trigger for reporting a casualty would change under 33 CFR part 146.

**Table 6: Affected Population**

	<b>NPRM (2014)</b>	<b>SNPRM (2020)</b>
<b>Moved to Report under 46 CFR Part 4</b>		
Industrial Vessels (Foreign)	310	310
Oil Supply Vessels (Foreign)	9	0
MODUs (Foreign)*	73	257
Lift Boats (Foreign)	N/A	13
Floating OCS Facilities (Foreign)	28	8
<b><i>Total Foreign Vessels</i></b>	<b>420</b>	<b>588</b>
<b>Updated Property Damage Threshold</b>		
Fixed Platforms (All U.S.)	N/A	1,754

\*This number reflects active MODUs as reported by MISLE. It does not necessarily show how many are actively drilling, or in contact with the seabed.

### **Baseline Reporting**

Table 7 describes the different events that prompt reporting of a marine casualty under 33 CFR part 146 and 46 CFR part 4. Title 46 CFR part 4 has more casualty

<sup>17</sup> “Marine Casualty Reporting on the Outer Continental Shelf” (79 FR 1780, January 10, 2014).

<sup>18</sup> The following vessel types are excluded: cable laying, dredger, dredger barge, factory ship, fishing support vessel, floating dry dock, orbital launch, offshore service vessel, pilot vessel, radio ship, and seabed mining vessel. Supply vessels not listed as offshore service vessels and operating on an ocean route are included.

reporting triggers than 33 CFR part 146. Therefore, an FOF, MODU, or vessel would report more casualties under 46 CFR part 4 than under 33 CFR part 146.

**Table 7: Current Coast Guard Marine Casualty Reporting Requirements**

33 CFR Part 146	46 CFR Part 4
<p>Death Injuries to 5+ persons Incapacitation &gt; 72 hours; Property damage &gt; \$25,000 (fixed facilities only).  (33 CFR 146.30 and 146.303.)</p>	<p>Death Injury  Property damage &gt; \$75,000  Grounding  Allision  Vessel in distress or loss of communication with vessel Loss of—  <ul style="list-style-type: none"> <li>• Main propulsion</li> <li>• Primary steering</li> <li>• Associated systems or components affecting maneuverability</li> </ul>  Impairment of—  <ul style="list-style-type: none"> <li>• Vessel operation</li> <li>• Vessel components</li> <li>• Cargo</li> </ul>  Material or adverse impact to vessels’—  <ul style="list-style-type: none"> <li>• Seaworthiness.</li> <li>• Fitness for service.</li> <li>• Fitness for route.</li> <li>• Examples—fire, flooding, failure of or damage to fire extinguishing, lifesaving, auxiliary power, bilge pumping systems.</li> </ul>  Significant harm to the environment (defined in 46 CFR 4.03-65).  (46 CFR 4.04-1, 4.04-2, and 4.05-1.)</p>

The transfer of marine casualty reporting of FOFs, MODUs, and vessels to 46 CFR part 4 would require an increase in the types of reportable casualties, including injury to fewer than five persons, grounding, stranding, foundering, flooding, collision,



allision, explosion, fire, loss of propulsion, loss of steering, and impaired operations. There are already some voluntary submissions of MCRs for incidents on foreign FOFs, MODUs, and vessels involving the above criteria, although they are not required under 33 CFR part 146. Even with a count of active foreign FOFs, MODUs, and vessels each year, we are unable to determine the number of incidents that were non-reportable under 33 CFR part 146, but would have been reportable under 46 CFR part 4. Without aligned reporting, we are unable to compare how often one type of incident occurs on foreign FOFs, MODUs, and vessels compared to their U.S. counterparts, while accounting for differences in the total population sizes, how much of those populations actively report, and general risk levels between the two populations.

The reports for non-fatal types of incidents described as voluntary for foreign FOFs, MODUs, and vessels are mandatory for U.S. FOFs, MODUs, and vessels and would become mandatory for all flags with this SNPRM. We show the number of voluntary and mandatory MCR by flag type in table 8. From 2015 to 2019, MISLE recorded 188 total voluntary reports of casualties that met the reporting criteria under 46 CFR part 4 from a total of 114 uniquely identified foreign FOFs, MODUs, and vessels reporting under title 33 of the CFR.<sup>19</sup> Table 8 shows the number of MCRs from foreign FOFs, MODUs, and vessels that met the criteria for a reportable casualty under title 46 of the CFR but not under title 33 of the CFR, meaning those reports were submitted voluntarily. Table 9 shows the number of unique foreign FOFs, MODUs, and vessels that submitted voluntary reports in each year. These reports are unique only within each year; across the entire range from 2015 to 2019, there were 78 unique entities meaning 36 foreign FOFs, MODUs, or vessels submitted reports in multiple years.

**Table 8: Casualty Reports by Type from Foreign FOFs, MODUs, and Vessels**

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<sup>19</sup> Voluntary reports are identified by keywords included in the activity title that match a reporting criterion, such as “grounding” or “ground.” Subjectivity or error in the entry of a casualty into MISLE or overlapping reporting criteria may cause error in identifying the cause of a report.

	2015	2016	2017	2018	2019	Grand Total	Annual Average
<b>Reportable under Title 46 of the CFR but Not under Title 33</b>							
Injury < 5 & > 0	47	23	24	43	21		
Grounding	0	4	6	0	0		
Allision	0	2	3	1	0		
Stranding	0	0	0	0	0		
Loss of Propulsion	1	1	0	0	0		
Loss of Steering	0	0	0	0	0		
Impaired Operation	0	0	0	0	0		
Foundering	0	0	0	0	0		
Flooding	0	0	3	0	0		
Collision	1	0	0	0	0		
Explosion	0	0	0	0	0		
Fire	5	1	1	1	0		
Total	54	31	37	45	21	188	37.6
<b>Reportable under Title 33 of the CFR</b>							
Fatality	3	0	1	1	0	5	1.0
Injury >5	0	0	0	0	0	0	0

**Table 9: Number of Unique Reporting Foreign FOFs, MODUs, and Vessels**

2015	2016	2017	2018	2019	Total	Annual Average
32	19	20	23	20	114	22.8

Similarly, from 2015 to 2019, MISLE recorded 803 total reports from 498 identified U.S. FOFs, MODUs, and vessels that matched the reporting criteria for voluntary reports from foreign FOFs, MODUs, and vessels, although those types of reports are mandatory for U.S. FOFs, MODUs, and vessels. Table 10 shows the number of MCRs from U.S. FOFs, MODUs, and vessels that met the criteria for a reportable casualty under title 46 of the CFR but not under title 33 of the CFR. Table 11 shows the number of unique U.S. FOFs, MODUs, and vessels that submitted reports in each year. These are unique only within each year, across the entire range from 2015 to 2019, there were 382 unique entities meaning 116 U.S. FOFs, MODUs, or vessels submitted reports in multiple years.

**Table 10: Casualty Reports by Type from U.S. FOFs, MODUs, and Vessels**

	2015	2016	2017	2018	2019	Grand Total	Annual Average
<b>Reportable under Title 46 of the CFR</b>							
Injury < 5 & > 0	118	94	116	115	99		
Grounding	8	20	16	6	10		
Allision	23	15	16	12	13		
Stranding	0	0	0	0	0		
Loss of Propulsion	4	3	12	5	3		
Loss of Steering	1	1	0	0	0		
Impaired Operation	0	0	0	0	0		
Foundering	0	0	0	0	0		
Flooding	14	12	10	6	10		
Collision	8	5	9	3	3		
Explosion	0	0	0	0	0		
Fire	5	3	1	2	2		
Total	181	153	180	149	140	803	160.6
<b>Reportable under Title 33 of the CFR</b>							
Fatality	3	1	1	2	0	7	1.4
Injury >5	0	0	0	0	0	0	0

**Table 11: Number of Unique Reporting U.S. FOFs, MODUs, and Vessels**

2015	2016	2017	2018	2019	Total	Annual Average
107	95	114	102	80	498	99.6

For MCRs involving fatalities, which are mandatory for everyone, an average 0.04 fatality reports from 2015 to 2019 were submitted for foreign FOFs, MODUs, and vessels, compared to an average of 0.01 fatality reports submitted for U.S. FOFs, MODUs, and vessels.<sup>20</sup> Table 13 shows the 5-year average number of MCRs per unique FOF, MODU, and vessel. The averages presented were rounded to two decimal places

<sup>20</sup> The 5-year average of fatality reports per reporting foreign FOFs, MODUs, and vessels is 0.04  $((3+0+1+1+0) \div (32+19+20+23+20))$  or  $((0.09 + 0.00 + 0.05 + 0.04 + 0.00) / 5)$  as shown above. The 5-year average of fatality reports per reporting U.S. FOF, MODU, and vessel is 0.01  $((3+1+1+2+0) \div (107+95+114+102+80))$  or  $((0.03 + 0.01 + 0.01 + 0.02 + 0.00)/5)$ .

for presentation, but were not rounded in the calculations for the estimates in this analysis.

**Table 13: 5-Year Average Casualty Reports per Unique FOF, MODU, and Vessel, from 2014–2019**

	<b>Foreign</b>	<b>U.S.</b>
Average number of FOF, MODU, and vessels reporting annually	22.80	99.60
Average number of non-fatality reports	37.60	160.60
Average number of fatality reports	1.00	1.40

\* Ratios are sensitive to rounding and were not rounded in the calculations for the analysis.

Currently, fatal MCRs are mandatory for both populations while, in this sample, non-fatal MCRs are voluntary for foreign FOFs, MODUs, and vessels.

### **Costs from Increased Reporting**

Under this SNPRM, the Coast Guard would require that owners and operators of foreign FOFs, MODUs, and vessels engaged in an OCS activity report marine casualties using the CG-2692 form under the reporting requirements of 46 CFR part 4 instead of the requirements under 33 CFR part 146. All U.S. entities already comply with these requirements. To estimate the potential increase in non-fatal MCRs generated by foreign FOFs, MODUs, and vessels, the Coast Guard estimates how many MCRs would be generated if the average number of non-fatality MCRs for the foreign population matched those of the U.S. population. Coast Guard estimates this by taking the proportion of US non-fatality reports to fatality reports and foreign non-fatality reports to fatality reports and solving for foreign non-fatality reports as shown in equation (A). Coast Guard believes that this is the best approximation available, given uncertainty about differences in the total population sizes, differences in the percentage of the active populations that report MCRs, and differences in general risk levels of operations between the two populations. The Coast Guard welcomes any suggestions or data that may better account for these uncertainties.

$$(A) \frac{US \text{ nonfatality reports}}{US \text{ fatality reports}} = \frac{Foreign \text{ nonfatality reports}}{Foreign \text{ fatality reports}}$$

Using the figures for average annual reports from Table 12, we then apply the formula shown in (A), assuming that the total value of foreign non-fatality reports is unknown and that the 37.60 non-fatality reports from foreign FOFs, MODUs, and vessels are voluntary but not equal to the total number of reports that would be realized under this proposed rule. The result is 114.71 foreign non-fatality reports, the total number of non-fatality reports that would have been reported, if the proportion of foreign fatality reports was the same as US fatality reports. The calculation of this 114.7 is shown in the equations (B), (C), and (D).

$$(B) \frac{160.60}{1.40} = \frac{x}{1.00}$$

$$(C) 160.60 * 1.00 = 1.40 * x \rightarrow 160.60 = 1.40x$$

$$(D) \frac{160.60}{1.40} = x \rightarrow x = 114.71$$

In (B), we assume that the U.S. non-fatality reports is equal to 160.60 as shown in Table 12, that U.S. fatality reports is equal to 1.40, and that foreign fatality reports is equal to 1.0. In (C), we begin solving the proportion for x by multiplying 160.60 by 1.0 and multiplying 1.40 by x, which results in  $160.60 = 1.40x$ . Finally, in (D), we divide 160.60 by 1.40, which equals 114.71, the total number of foreign non-fatality reports.

Then, we subtract the number of voluntary reports already received from the foreign population to get the marginal increase in MCRs. This is the total of 114.71 foreign non- fatality reports minus the 37.60 voluntary foreign non-fatality reports, for an increase of 77.11 reports. Therefore, Coast Guard assumes that by making the requirements for reporting non-fatal casualties by foreign FOFs, MODUs, and vessels the same as for US FOFs, MODUs, and vessels, that foreign FOFs, MODUs, and vessels would report an average of 78 more non-fatality reports per year, rounding 77.11 up to

the nearest whole number.

Table 14 summarizes the annual cost of additional MCRs submitted for foreign FOFs, MODUs, and vessels. The time burden and wage cost of generating MCRs comes from the collection of information (COI) “OMB Control No. 1625-0001, Report of Marine Casualty and Chemical Testing of Commercial Vessel Personnel.” It lists the burden hour per response for an MCR as 1 hour, with a corresponding loaded hourly wage of \$30, which is equivalent to the 2019 GS-3 Outside Government Wage.<sup>21</sup> In this SNPRM, we use the 2019 U.S. Bureau of Labor Statistics (BLS) wage for captains, mates, and pilots of water vessels, which is a loaded hourly wage of \$64.14,<sup>22</sup> instead of the 2019 Commandant Instruction 7310.1T, Reimbursable Standard Rates<sup>23</sup> wage used in the NPRM because we believe it is a closer match to the occupation of the submitter and, therefore, more accurate. In the 2018 Final Rule updating the property damage threshold for 46 CFR part 4, the Coast Guard acknowledged industry comments that some particularly complex reports require additional review before submission to the Coast Guard. Thus, the Coast Guard uses the same adjustment for MCRs under 33 CFR and assumes that 10 percent of MCRs have an additional burden-hour response of 10 hours, to account for internal company review conducted by lawyers or upper management. This assumption does not increase the number of MCRs but increases the burden time for each MCR, the total increase in reports is 78 and 8 of those reports will take 11 hours to prepare instead of 1 hour. The current collection lists a corresponding wage rate of \$110, equivalent to the 2019 GS-14 Outside Government Wage.<sup>24</sup> As above, for this SNPRM,

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<sup>21</sup> [www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201903-1625-001](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201903-1625-001).

<sup>22</sup> The 2019 mean wage for captains, mates, and pilots of water vessels is \$42.03 ([www.bls.gov/oes/2019/may/oes535021.htm](http://www.bls.gov/oes/2019/may/oes535021.htm)). The load factor is equal to the ratio of total compensation (CMU2010000520000D) over wages and salaries (CMU2020000520000D) from 2019 or \$33.20 divided by \$21.76, or 1.526. The loaded wage is the mean wage multiplied by the load factor. The loaded wage, \$64.14, equals \$42.03 multiplied by 1.526. Series are from the Bureau of Labor Statistics, Employer Cost for Employee Compensation for Private Industry Workers, Transportation and Material Moving.

<sup>23</sup> [www.uscg.mil/Portals/0/NPFC/docs/7310/CI\\_7310\\_1T.pdf?ver=2019-01-28-080829-207](http://www.uscg.mil/Portals/0/NPFC/docs/7310/CI_7310_1T.pdf?ver=2019-01-28-080829-207).

<sup>24</sup> Ibid.

we use the BLS wage for lawyers, which is a loaded hourly wage of \$106.61,<sup>25</sup> instead of the Commandant Instruction wage, because we believe it more accurately reflects who is performing this review of the more complex report.

**Table 14: Annual Cost of Additional Casualty Reports from Foreign FOFs, MODUs, and Vessels**

	<b>Annual Responses (A)</b>	<b>Burden Hours per Response (B)</b>	<b>Annual Hour Burden (C)=(A)×(B)</b>	<b>Wage Rate (D)</b>	<b>Annual Cost Burden (E)=(C)×(D)</b>
Marine Casualty Report	78	1	78	\$64.14	\$5,003
Additional Burden for 10% of Respondents*	8	10	80	\$106.61	\$8,529
<b>Total Annual Cost</b>					<b>\$13,531</b>

\* Note that these increased review times do not constitute separate MCRs. Rather, they increase the total burden time of a single report. We have only 78 new reports, 8 of which will require 11 total hours to prepare.

Table 15 shows the annual costs across a 10-year period of analysis. This annual cost of \$13,531 generates a total cost of \$95,039 over 10 years in 2019 dollars discounted at 7 percent, or \$13,531 annualized.

**Table 15: Cost to Industry Over 10 Years**

<b>Year</b>	<b>Annual Undiscounted Cost</b>	<b>Total, Discounted</b>	
		<b>7%</b>	<b>3%</b>
1	\$13,531	\$12,646	\$13,137
2	\$13,531	\$11,819	\$12,755
3	\$13,531	\$11,046	\$12,383
4	\$13,531	\$10,323	\$12,023
5	\$13,531	\$9,648	\$11,672
6	\$13,531	\$9,017	\$11,332
7	\$13,531	\$8,427	\$11,002
8	\$13,531	\$7,875	\$10,682
9	\$13,531	\$7,360	\$10,371
10	\$13,531	\$6,879	\$10,069
<b>Total</b>	<b>\$135,315</b>	<b>\$95,039</b>	<b>\$115,426</b>
<b>Annualized</b>		<b>\$13,531</b>	<b>\$13,531</b>

<sup>25</sup> The 2019 mean wage for lawyers is \$69.86 ([www.bls.gov/oes/2019/may/oes231011.htm](http://www.bls.gov/oes/2019/may/oes231011.htm)). The load factor is equal to the ratio of total compensation (CMU2010000520000D) over wages and salaries (CMU2020000520000D) from 2019 or \$33.20 divided by \$21.7676, or 1.526. The loaded wage is the mean wage multiplied by the load factor. The loaded wage, \$106.61, equals \$69.86 multiplied by 1.526. Series are from the Bureau of Labor Statistics, Employer Cost for Employee Compensation for Private Industry Workers, Transportation and Material Moving.

## **Benefits**

Through this SNPRM, the Coast Guard would update our casualty reporting regulations under 33 CFR part 146, issued in 1955, to keep up with technology and recognize that floating OCS facilities and MODUs are more like ocean-going vessels than the fixed OCS facilities the regulations were originally written to address. We would also harmonize reporting requirements for all foreign FOFs, MODUs, and vessels to the same reporting standards as their U.S. counterparts. These proposed changes would help provide consistency on the OCS and increase our maritime domain awareness by creating the mechanism for more complete casualty data that leads to planning contingencies, evaluating risks, and identifying trends.

Coast Guard District, Area, Headquarters, Area, District, and local offices, and the OCS National Center of Expertise analyze and share accident information. In addition, the Coast Guard “Marine Safety Manual”<sup>26</sup> contains guidance about broad distribution of accident and inspection information when potentially hazardous or systemic problems are found with a vessel, operator, or type of equipment. This data helps the Coast Guard identify and address safety issues proactively while improving the accuracy of Coast Guard’s decision making and policy development. Therefore, we believe a qualitative benefit of this proposed supplemental rule would come from the Coast Guard receiving reports of casualties that we would not otherwise receive.

## **Cost Savings from Property Damage Threshold Update**

As a supplement to the reporting change for foreign FOFs, MODUs, and vessels in this SNPRM, the Coast Guard would also align reporting by updating the property damage threshold for reporting a marine casualty under 33 CFR 146.30 from \$25,000 to \$75,000 to align with the threshold listed in 46 CFR 4.05-1. The threshold in 46 CFR

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<sup>26</sup> [www.uscg.mil/guidance](http://www.uscg.mil/guidance).



part 4 was previously updated to \$75,000 in the 2018 Final Rule.<sup>27</sup> Raising the threshold for reportable property damage would decrease the number of marine casualties reported, since more damage would have to be incurred to meet the reportable threshold. The decrease in reports from the threshold update would mitigate the increase in reports generated by the cost section of this supplemental proposed rulemaking. In the following analysis, we apply the updated damage threshold of \$75,000 to reports submitted for fixed OCS facilities under 33 CFR part 146 as well as to the estimated increase of 66 MCRs, which used the \$25,000 threshold when reported. Fixed OCS facilities were not included in the analysis of the 2018 Final Rule. So, the reduction in reports from fixed OCS reporting facilities was never estimated.<sup>28</sup>

To estimate the decrease in reports, the Coast Guard identified MCRs submitted in the last 3 years that were generated because of property damage alone and would no longer meet the updated higher damage threshold for reporting. These are MCRs with property damage between the threshold of \$25,000 and the proposed threshold of \$75,000. We did not include fatality or injury, as these types of incidents are reportable regardless of property damage.

The Coast Guard identified 41 total reports submitted for FOFs, MODUs, and vessels currently reporting under 33 CFR part 146, generated because of property damage between \$25,000 and \$75,000 for a 5-year average of 9 reports annually. We then apply the same assumption that 10 percent of MCRs have an additional burden hour response of 10 hours to account for additional review time. We use the same assumed burden hour and wage used above for MCRs, with a corresponding loaded wage rate of \$64.14. Table 16 shows how these assumptions generate a total annual saved cost of \$1,643 that can be

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<sup>27</sup> “Marine Casualty Reporting Property Damage Thresholds” (83 FR 11889, March 19, 2018).

<sup>28</sup> See page 11891 of 83 FR 11889 under “E. Amending the Dollar Amount Thresholds for Outer Continental Shelf Casualty Reporting in Title 33 of the CFR.”

applied to the increased costs described in the **Costs from Increased Reporting** section to reduce net costs.

**Table 16: Decreased Reporting Costs for Foreign FOFs, MODUs, and Vessels Moving to Title 46 of the CFR**

	<b>Estimated Responses That Would No Longer Meet Reporting Threshold (A)</b>	<b>Burden Hours per Response (B)</b>	<b>Annual Hour Burden (C)=(A) × (B)</b>	<b>Wage Rate (D)</b>	<b>Annual Cost Saved (E)=(C) × (D)</b>
Decrease from Property Damage Threshold	-9	1	-9	\$64.14	\$577
Additional Burden for 10% of Respondents	-1	10	-10	\$106.61	\$1,066
<b>Total Cost Saved</b>					<b>\$1,643</b>

Table 17 shows how this annual savings of \$1,643 generates \$11,542 in cost savings over 10 years in 2019 dollars, discounted at 7 percent, or \$1,643 annualized.

**Table 17: Cost Savings to Foreign FOFs, MODUs, and Vessels Over 10 Years**

<b>Year</b>	<b>Annual Undiscounted Cost</b>	<b>Total, Discounted</b>	
		<b>7%</b>	<b>3%</b>
1	-\$1,643	-\$1,536	-\$1,595
2	-\$1,643	-\$1,435	-\$1,549
3	-\$1,643	-\$1,341	-\$1,504
4	-\$1,643	-\$1,254	-\$1,460
5	-\$1,643	-\$1,172	-\$1,418
6	-\$1,643	-\$1,095	-\$1,376
7	-\$1,643	-\$1,023	-\$1,336
8	-\$1,643	-\$956	-\$1,297
9	-\$1,643	-\$894	-\$1,259
10	-\$1,643	-\$835	-\$1,223
<b>Total</b>	<b>-\$16,433</b>	<b>-\$11,542</b>	<b>-\$14,018</b>
<b>Annualized</b>		<b>-\$1,643</b>	<b>-\$1,643</b>

For fixed OCS facilities, we identified three reports generated because of property damage between \$25,000 and \$75,000, and applied the same assumption that 10 percent of MCRs have an additional burden hour response of 10 hours to account for additional review time. Since we assume any fraction of a report would be a whole report, we

round the 5-year average of 0.15 up to one report. Table 18 shows how we use the same burden hour and wage assumptions as above to generate an annual cost savings of \$1,194, which reduces the net cost of this rule.

**Table 18: Decreased Reporting Costs for Fixed OCS Facilities**

	<b>Estimated Responses that would no longer meet reporting threshold</b>	<b>Rounding Up to Nearest Whole Number (A)</b>	<b>Burden Hours per Response (B)</b>	<b>Annual Hour Burden (C)=(A) × (B)</b>	<b>Wage Rate (D)</b>	<b>Annual Cost Saved (E)=(C) × (D)</b>
Decrease from Property Damage Threshold	-2	-2	1	-2	\$64.14	\$128
Additional Burden for 10% of Respondents	-0.15	-1	10	-10	\$106.61	\$1,066
<b>Total Cost Saved</b>						<b>\$1,194</b>

Table 19 shows how this annual savings of \$1,194 generates \$8,389 in cost savings over 10 years discounted at 7 percent, or \$1,194 annualized.

**Table 19: Cost Savings to Fixed OCS Facilities Over 10 Years**

<b>Year</b>	<b>Annual Undiscounted Cost</b>	<b>Total, Discounted</b>	
		<b>7%</b>	<b>3%</b>
1	-\$1,194	-\$1,116	-\$1,160
2	-\$1,194	-\$1,043	-\$1,126
3	-\$1,194	-\$975	-\$1,093
4	-\$1,194	-\$911	-\$1,061
5	-\$1,194	-\$852	-\$1,030
6	-\$1,194	-\$796	-\$1,000
7	-\$1,194	-\$744	-\$971
8	-\$1,194	-\$695	-\$943
9	-\$1,194	-\$650	-\$915
10	-\$1,194	-\$607	-\$889
<b>Total</b>	-\$11,944	-\$8,389	-\$10,188
<b>Annualized</b>		-\$1,194	-\$1,194

Together, these cost savings to industry total \$2,838 (\$1,643 + \$1,194) annually.

Table 20 shows how these annual savings generate \$19,931 in cost savings to industry over 10 years discounted at 7 percent, or \$2,838 annualized.

**Table 20: Total Cost Savings**

Year	Annual Undiscounted Savings	Total, Discounted	
		7%	3%
1	-\$2,838	-\$2,652	-\$2,755
2	-\$2,838	-\$2,479	-\$2,675
3	-\$2,838	-\$2,316	-\$2,597
4	-\$2,838	-\$2,165	-\$2,521
5	-\$2,838	-\$2,023	-\$2,448
6	-\$2,838	-\$1,891	-\$2,377
7	-\$2,838	-\$1,767	-\$2,307
8	-\$2,838	-\$1,652	-\$2,240
9	-\$2,838	-\$1,544	-\$2,175
10	-\$2,838	-\$1,443	-\$2,112
<b>Total</b>	-\$28,377	-\$19,931	-\$24,206
<b>Annualized</b>		-\$2,838	-\$2,838

### **Cost to Government**

The increase of 78 MCRs would be mitigated by a total decrease of 11 reports; 9 from the increased property damage threshold for FOFs, MODUs, and vessels, and 2 from the update to fixed OCS facilities. Following the methodology in appendix B of the COI number 1625-0001, we do not assume that the 10 percent of reports that take longer to prepare for submission would take longer for the Coast Guard to review. The burden hour established in the COI already accounts for variance in the time to review MCRs of differing complexity and severity.

We assume that there is 1 hour of processing time at a GS-9 wage of \$54.84 for each MCR.<sup>29</sup> For the 67 additional responses, there is a total annual cost of \$3,674, as shown in table 21.

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<sup>29</sup> Casualty reports are reviewed at Coast Guard Headquarters and the 2020 Washington, DC locality wage of \$32.33 for a GS-9, Step 5, employee is used ([www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB\\_h.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf)). The load factor is 1.70 (rounded) estimated by dividing \$67.00 average total compensation per hour by \$39.50 average hourly wage from tables 4 and 2, respectively, of the 2017 Congressional Budget Office report, “Comparing the Compensation of Federal and Private-Sector

**Table 21: Cost to Government**

Cost Category	Reponses	Burden Hours per Response	Annual Hours	Wage Rate	Annual Cost
Processing MCR	67	1	67	\$54.84	\$3,674
<b>Total Annual Cost</b>					<b>\$3,674</b>

Table 22 shows how the annual cost of \$3,674 generates a total cost of \$25,806 over 10 years in 2019 dollars, discounted at 7 percent, or \$3,674 annualized.

**Table 22: Cost to Government over 10 Years**

Year	Annual Undiscounted Cost	Total, Discounted	
		7%	3%
1	\$3,674	\$3,434	\$3,567
2	\$3,674	\$3,209	\$3,463
3	\$3,674	\$2,999	\$3,362
4	\$3,674	\$2,803	\$3,264
5	\$3,674	\$2,620	\$3,169
6	\$3,674	\$2,448	\$3,077
7	\$3,674	\$2,288	\$2,987
8	\$3,674	\$2,138	\$2,900
9	\$3,674	\$1,999	\$2,816
10	\$3,674	\$1,868	\$2,734
<b>Total</b>	\$36,742	\$25,806	\$31,341
<b>Annualized</b>		\$3,674	\$3,674

**Net Cost**

The net annualized costs of this rule would be \$14,368 [(\$13,531 + \$3,674) – \$2,838], discounted at 7-percent. Table 23 shows the sum of the net costs over 10 years for a total net cost of \$100,914 in 2019 dollars discounted at 7 percent, or \$14,368 annualized.

**Table 23: Total Net Costs**

Year	Cost to	Cost to	Cost Savings	Net Cost	Total, Discounted
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Employees 2011-2015” ([www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf](http://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf)). The loaded wage is the mean wage multiplied by the load factor. The loaded wage, \$54.84, equals \$32.33 multiplied by 1.6962.

	<b>Industry</b>	<b>Government</b>	<b>to Industry</b>		<b>7%</b>	<b>3%</b>
1	\$13,531	\$3,674	\$(2,838)	\$14,368	\$13,428	\$13,949
2	\$13,531	\$3,674	\$(2,838)	\$14,368	\$12,550	\$13,543
3	\$13,531	\$3,674	\$(2,838)	\$14,368	\$11,729	\$13,149
4	\$13,531	\$3,674	\$(2,838)	\$14,368	\$10,961	\$12,766
5	\$13,531	\$3,674	\$(2,838)	\$14,368	\$10,244	\$12,394
6	\$13,531	\$3,674	\$(2,838)	\$14,368	\$9,574	\$12,033
7	\$13,531	\$3,674	\$(2,838)	\$14,368	\$8,948	\$11,682
8	\$13,531	\$3,674	\$(2,838)	\$14,368	\$8,362	\$11,342
9	\$13,531	\$3,674	\$(2,838)	\$14,368	\$7,815	\$11,012
10	\$13,531	\$3,674	\$(2,838)	\$14,368	\$7,304	\$10,691
<b>Total</b>				\$143,680	\$100,914	\$122,562
<b>Annualized</b>					\$14,368	\$14,368

### **Alternatives Considered**

#### *(1) No Action.*

Keeping current reporting requirements would perpetuate reporting requirement inconsistencies between foreign and U.S. FOFs, MODUs, and vessels engaged in an OCS activity. The resulting information asymmetry prevents the Coast Guard from maintaining domain awareness on the OCS. Under the status quo, near misses on foreign FOFs, MODUs, and vessels would continue to not be reported to the Coast Guard, unlike they are on U.S. FOFs, MODUs, and vessels.

Although there is no increased reporting cost with this alternative, it perpetuates information asymmetry in the maritime domain. Therefore, the Coast Guard did not choose this alternative.

#### *(2) Lower Reporting Requirements for U.S. FOFs, MODUs, and Vessels to Harmonize.*

Rather than alter foreign reporting to harmonize with reporting in 46 CFR part 4, the Coast Guard could alter all U.S. reporting in 46 CFR part 4 to harmonize with 33 CFR part 146. This would reduce the types of triggers that generate a reportable marine casualty and likely decrease the number of reports submitted to the Coast Guard. While reduced reporting could be a cost saving to industry, it could also reduce the Coast

Guard's maritime domain awareness and increase risk to maritime safety and the marine environment as suggested in the *Deepwater Horizon* accident report. For instance, under this alternative Coast Guard would not receive reports from vessels about casualties involving allision, collision, grounding, or significant harm to the environment, etc. These types of casualties are often associated with injury, fatality, and property damage and losing awareness of these incidents would likely decrease safety on the outer continental shelf. This alternative would also undermine the Coast Guard's efforts to keep up with technology as the energy development industry moved further offshore. In this environment, floating OCS facilities are typical and, as explained in section V. of this preamble, the current regulations in 33 CFR part 146 were originally developed and applied to fixed OCS facilities operating closer to land. Therefore, the Coast Guard did not choose this alternative.

*(3) Alter Reporting Requirements on Foreign FOFs, MODUs, and Vessels to Harmonize with Reporting Requirements under 46 CFR Part 4 (Proposed).*

The impact of altering the reporting requirements on foreign FOFs, MODUs, and vessels engaged in an OCS activity to harmonize with 46 CFR part 4 is demonstrated in the analysis above. The Coast Guard chooses this alternative over no action or reducing reporting because it increases domain awareness at relatively little cost to industry while not losing situational awareness on particular casualty types as with alternative two.

*B. Small Entities*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, we have considered whether this SNPRM would have a significant economic impact on a substantial number of small entities. This interim RFA updates the analysis done in the 2014 NPRM to account for changes in revenues during the intervening period. The Coast Guard did not receive comments on the previous small entity analysis. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Operations on the OCS encompass many different North American Industry Classification System (NAICS) codes. In a random sample of 80 foreign entities taken from a population of 99 operators for this regulatory analysis, 15 different NAICS codes applied.<sup>30</sup> Therefore, the standard for a small business in this sample has a wide range, with revenue thresholds ranging from \$16.5 million to \$1,250 million, and employee thresholds ranging from 100 to 1,000 employees.

**Table 24: Applicable NAICS Codes of Operators**

<b>NAICS Code</b>	<b>Description</b>	<b>Number of Operators Classified</b>	<b>Size Standard</b>
114111	Finfish Fishing	1	1,000 Employees
212111	Oil & Gas Exploration and Services	1	1,000 Employees
213111	Drilling Oil and Gas Wells	11	1,000 Employees
213112	Support Activities for Oil and Gas Operations	4	\$41,500,000
236115	New Single-Family Housing Construction (Excludes For-Sale Builders)	1	\$39,500,000
237110	Water and Sewer Line and Related Structures Construction	8	\$39,500,000
238910	Site Preparation Contractors	1	\$16,500,000
333132	Oil and Gas Field Machinery and Equipment Manufacturing	2	\$1,250,000,000
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	100 Employees
424460	Fish & Seafood Merchant Wholesalers	1	100 Employees
441222	Boat Dealers	2	\$35,000,000
524298	All Other Insurance Related Activities	4	\$16,500,000
541330	Engineering Services	2	\$16,500,000
999990	Unclassified	1	N/A

<sup>30</sup> Not all operators had an available NAICS code; those that did not were assumed to be small entities.



In this sample of 80 foreign entities, 63 had a known revenue or employee count. Of these 63 foreign entities, 24 had annual revenues less than the threshold for a small business of that NAICS code. Five entities had fewer employees than the threshold for a small business of that NAICS code. In total, 29 entities of the 80 (36 percent) were small businesses.

The primary cost of this rule would be the additional MCR reports submitted by foreign businesses operating foreign FOFs, MODUs, and vessels on the OCS. The Coast Guard estimates the total annual cost would be \$13,531 from an increase of 78 reports. While this cost would be distributed across the entire industry, we do not know the exact distribution, since the number of MCRs per operator depends on that operator's specific behavior, which can change over time. In the last 10 years, the average number of reports per owner was 1.03 (compared to the 5-year average of 1.64 from table 6). Assuming that trend continues, no single operator would generate more than two additional reports (rounding up) under the proposed change. For this small entity analysis, we show the possible impact of two reports per operator at \$346.96. This assumes the total average cost per report is \$173.48 (\$13,531 divided by 78 reports) to account for variance in the complexity of a report. To have a significant impact on an individual company under SBA standards, the cost would need to represent more than 1 percent of an individual company's total revenue. In this scenario, the company's total revenue would have to be \$35,500 or less. In the sample of 62 operators with known revenues, none had a revenue smaller than \$34,696.

**Table 25: Entities Where Cost Represents More Than 1 Percent of Total Revenues**

	<b>With Revenue Less than \$34,696</b>	<b>Total</b>
Number of Operators	0	80
% of small entities with known revenue	0%	24
% of entities with known revenue	0%	62

The primary cost savings of this SNPRM would be the reduced reporting by U.S. businesses operating fixed OCS facilities, who would report under the higher damage threshold of 33 CFR part 146. The Coast Guard estimates the total annual cost savings would be \$2,838 in 2019 dollars, discounted at 7 percent for the entire industry. As this is a cost savings that helps mitigate the impact of the cost of this rule, we do not consider this SNPRM would have a significant negative impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this SNPRM, if promulgated, would not have a significant economic impact on a substantial number of small entities. We are interested in the potential impacts from this SNPRM on small businesses and request public comment on these potential impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this SNPRM would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this SNPRM so that they can better evaluate its potential effects on them and participate in the rulemaking. If the SNPRM would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this SNPRM. The Coast Guard will not retaliate against small entities that question or complain about this SNPRM or any policy or action of the Coast Guard.

Small businesses may also send comments on the actions of Federal employees

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

*D. Collection of Information*

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This action contains proposed amendments to the existing information collection requirements previously approved under OMB Control Number 1625-0001.<sup>31</sup> This amendment would increase the number of affected facilities and the burden for the existing COI number as described below.

*Title:* Report of Marine Casualty Information and Chemical Testing of Commercial Vessel Personnel

*OMB Control Number:* 1625-0001

*Summary of the Collection of Information:* This collection requires responses such as the preparation of written notification by completing a CG-2692 (series) form and the processing of records. We use this information to identify pertinent safety lessons and to initiate appropriate steps for reducing the likelihood of similar accidents in the future. The collection of information will aid the regulated public in assuring safe practices.

*Need for Information:* These reporting requirements permit the Coast Guard to

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<sup>31</sup> [www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1625-0001](http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1625-0001).

investigate marine casualties, as required by 46 U.S.C. 6301, to determine the causes of casualties and whether existing safety standards are adequate or new laws or regulations need to be developed. Receipt of a marine casualty report is often the only way in which the Coast Guard becomes aware of a marine casualty. It is, therefore, a necessary first step that provides the Coast Guard with the opportunity to determine the extent to which a casualty will be investigated.

*Proposed Use of Information:* In the short term, the information provided in the report may also trigger corrective safety actions addressing immediate hazards or defective conditions, further investigations of mariner conduct or professional competence, or civil or criminal enforcement actions by the Coast Guard, other Federal agencies, or State and local authorities. In the long term, the information contained in the report becomes part of the Coast Guard's MISLE database. The Coast Guard uses the information in the MISLE database to identify safety problems and long-term trends, publish casualty summaries and annual statistics for public use, establish whether additional safety oversight or regulation is needed, measure the effectiveness of existing regulatory programs, and better focus the Coast Guard's limited marine safety resources.

*Description of the Respondents:* The respondents are the owners, agents, masters, operators, or persons in charge that notify the nearest Sector Office, Marine Inspection Office, or Coast Guard's Group Office whenever a vessel or facility is involved in a marine casualty.

*Number of Respondents:* We estimate an increase of 55 respondents for a written report of marine casualty. This increases the total number of respondents for reporting marine casualties from 5,617 to 5,684.

*Frequency of Response:* The notification response is required only if a marine casualty occurs as defined in 46 CFR 4.03-2 and 46 CFR 4.05-1.

*Burden of Response:* For each response, we estimate that it takes 1 hour for a vessel crewmember to complete all of the necessary forms (CG-2692 series). In addition, some marine casualty forms may undergo additional processing by the respondents. To account for this additional time, 10 percent of the forms submitted have 10 hours of additional burden.<sup>32</sup>

*Estimate of Total Annual Burden:* We estimate an increase of 675 respondents for the 1-hour response of a written report of marine casualty. This increases the total burden hours for reporting marine casualties from 5,617 to 5,684.

As required by 44 U.S.C. 3507(d), we will submit a copy of this SNPRM to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently

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<sup>32</sup> The Coast Guard estimates that it takes up to 1 hour to complete the necessary CG-2692 (series) form. However, we received public comments in 2013 on COI number 1625-0001 stating that some submitters take more time—up to 8 to 12 hours—to complete the form. See [www.regulations.gov/docket?D=USCG-2011-0710](http://www.regulations.gov/docket?D=USCG-2011-0710). The reason for this difference is that some entities have the form(s) reviewed by shore-side personnel, such as an attorney, prior to submission to the Coast Guard. The practice of having a form reviewed by an attorney is not required by Coast Guard regulation. While we believe that this does not typically occur, we have adjusted our burden estimate to account for the added review.

valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this SNPRM, OMB would need to approve the Coast Guard's request to collect this information.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

Congress specifically granted the authority to regulate artificial islands, installations, and other devices permanently or temporarily attached to the (OCS) and in the waters adjacent thereto as it relates to the safety of life to the Secretary of the Department in which the Coast Guard is operating. Title 43 U.S.C. 1333(d)(1) states that the Secretary "shall have the authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices ... as he may deem necessary." As this SNPRM would improve the Coast Guard's ability to collect and analyze casualty data for incidents on the OCS in order to maintain and improve safety of life on OCS installations, it falls within the scope of authority Congress granted exclusively to the Secretary. This authority has been delegated to the Coast Guard and is exercised in this rulemaking, and the States may not regulate within this category of marine casualty reporting. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this SNPRM would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*F. Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. Although this SNPRM would not result in such an expenditure, we do discuss the potential effects of this SNPRM elsewhere in this preamble.

*G. Taking of Private Property*

This SNPRM would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

*H. Civil Justice Reform*

This SNPRM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

We have analyzed this SNPRM under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This SNPRM is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

This SNPRM does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*K. Energy Effects*

We have analyzed this SNPRM under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.



This SNPRM does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this SNPRM under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This SNPRM is likely to be categorically excluded under paragraphs L54 and L57 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.<sup>33</sup> Paragraph L54 pertains to regulations which are editorial or procedural. Paragraph L57 pertains to regulations concerning the manning, documentation, admeasurement, inspection, and equipping of vessels. This rule involves changing the reporting criteria for certain casualties that occur on the OCS for foreign floating facilities, MODUs, and vessels engaged in OCS activities, and better harmonizes the casualty reporting requirements with those in place for similar U.S. FOFs, MODUs, and vessels. These proposed changes would promote the Coast Guard's marine safety mission. We seek any comments or information that may lead to the discovery of a significant environmental impact from this SNPRM.

**List of Subjects**

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<sup>33</sup> [www.dhs.gov/sites/default/files/publications/DHS\\_InstructionManual023-01-001-01 Rev01\\_508compliantversion.pdf](http://www.dhs.gov/sites/default/files/publications/DHS_InstructionManual023-01-001-01Rev01_508compliantversion.pdf).

*33 CFR Part 140*

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

*33 CFR Part 146*

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 4*

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 109*

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 140 and 146 and 46 CFR parts 4 and 109 as follows:

**TITLE 33—NAVIGATION AND NAVIGABLE WATERS**

**PART 140—GENERAL**

1. The authority citation for part 140 is revised to read as follows:

**Authority:** 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Amend § 140.10 by revising the definition of “Floating OCS facility” to read as follows:

**§ 140.10 Definitions.**

\* \* \* \* \*

*Floating OCS facility* means a U.S. or foreign buoyant OCS facility that is dynamically positioned on location or securely and substantially moored so that it cannot

be moved without a special effort. This term includes tension leg platforms and permanently moored semisubmersibles or shipshape hulls, but does not include mobile offshore drilling units and other vessels, as defined in this part.

\* \* \* \* \*

3. Revise § 140.201 to read as follows:

**§ 140.201 General.**

The Coast Guard investigates casualties occurring on the OCS including:

(a) Casualties on floating OCS facilities, MODUs, and vessels as described in 46 CFR part 4;

(b) Casualties on fixed OCS facilities as described in 33 CFR 146.30;

(c) Oil spillage exceeding 200 barrels of oil in one occurrence during a 30-day period; and

(d) Other injuries, casualties, accidents, complaints of unsafe working conditions, fires, pollution, and incidents occurring as a result of OCS activities as the Officer in Charge, Marine Inspection, deems necessary to promote the safety of life or property or protect the marine environment.

**§ 140.203 [Amended]**

4. Amend § 140.203 as follows:

a. In paragraph (b) introductory text, remove the text “Geological Survey” and add, in its place, the text “Bureau of Safety and Environmental Enforcement”.

b. In paragraph (b)(3), remove the text “examining” and add, in its place, the text “examining”.

**PART 146—OPERATIONS**

5. The authority citation for part 146 is revised to read as follows:

**Authority:** 43 U.S.C. 1333, 1348, 1350, 1356; Sec. 109, Pub. L. 109-347, 120 Stat. 1884; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

6. Revise § 146.30 to read as follows:

**§ 146.30 Notice of casualties.**

(a) The owner, operator, or person in charge of a fixed OCS facility must ensure that the Coast Guard is notified as soon as possible after a casualty occurs, and by the most rapid means available, of each casualty involving the facility which results in:

(1) Death;

(2) Injury to five or more persons in a single incident;

(3) Damage affecting the usefulness of primary lifesaving or firefighting equipment;

(4) Injury causing any person to be incapacitated for more than 72 hours;

(5) Damage to the facility exceeding \$75,000 resulting from a collision by a vessel with the facility; or

(6) Damage to the facility exceeding \$75,000.

(b) The notice required by paragraph (a) of this section must identify the person giving the notice and the facility involved and describe, insofar as practicable, the nature of the casualty and the extent of injury to personnel and damage to property.

(c) Damage costs referred to in paragraphs (a)(5) and (a)(6) of this section include the cost of labor and material to restore the facility to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, or gas freeing facility.

(d) The owner, operator, or person in charge of any floating OCS facility, mobile offshore drilling unit, or vessel engaged in an OCS activity must report casualties in accordance with 46 CFR part 4.

(e) The owner, operator, or person in charge of a foreign floating OCS facility, mobile offshore drilling unit, or vessel engaged in an OCS activity must include in the

written casualty report required under 46 CFR 4.05-12 information relating to alcohol or drug involvement.

**Subpart D [Removed]**

7. Remove subpart D, comprising §§ 146.301 and 146.303.

**Subpart E [Redesignated as Subpart D]**

8. Redesignate subpart E, comprising §§ 146.401, 146.402 and 146.405, as subpart D.

**TITLE 46—SHIPPING**

**PART 4—MARINE CASUALTIES AND INVESTIGATIONS**

9. The authority citation for part 4 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, 6305, 56311, and 70034; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

10. Revise § 4.01-1 to read as follows:

**§ 4.01-1 Scope of regulation.**

The regulations in this part govern marine casualty reporting, investigations of marine casualties, and submission of reports designed to increase the likelihood of timely assistance to vessels in distress.

11. Revise § 4.01-3(c) to read as follows:

**§ 4.01-3 Reporting exclusion.**

\* \* \* \* \*

(c) Vessels, floating OCS facilities, and MODUs are excluded from the requirements of § 4.05-1(a)(5) and (6) with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a reportable casualty (e.g., collision) or a reportable equipment casualty (e.g., cargo boom failure) and are subject to the reporting requirements of Occupational Safety and Health Administration (OSHA) under 29 CFR part 1904.

\* \* \* \* \*

12. Add § 4.03-0 to subpart 4.03 to read as follows:

**§ 4.03–0 Definitions that apply to this subpart.**

This subpart contains terms defined for purposes of this part.

13. Revise § 4.03-1 to read as follows:

**§ 4.03–1 Marine casualty or accident.**

*Marine casualty or accident* means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

- (1) Occurs upon the navigable waters of the United States, its territories or possessions;
- (2) Involves any U.S. vessel wherever such casualty or accident occurs; or
- (3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

(b) Any casualty or accident involving a vessel, floating OCS facility, or MODU as defined in 33 CFR part 140, when they are engaged in an OCS activity.

(c) The term “marine casualty or accident” applies to events including, but not limited to:

- (1) Any fall overboard, injury, or loss of life of any person;
- (2) Grounding;
- (3) Stranding;
- (4) Foundering;
- (5) Flooding;
- (6) Collision;
- (7) Allision;

- (8) Explosion;
- (9) Fire;
- (10) Reduction or loss of electrical power, propulsion, or steering capabilities;
- (11) Failures or occurrences, regardless of cause, which impair any aspect of operation, components, or cargo;
- (12) Any other circumstance that might affect or impair seaworthiness, efficiency, or fitness for service or route;
- (13) Any incident involving significant harm to the environment;
- (14) Any occurrences of injury or loss of life to any person while diving from a vessel, and using underwater breathing apparatus; or
- (15) Any incident described in § 4.05-1(a).

#### **§ 4.03-2 [Amended]**

14. Amend § 4.03-2 as follows:

- a. In the introductory text, remove the text, “in commercial service”, and add in its place, “, floating OCS facility, or MODU as described in § 4.03-1(a) and (b)”.
- b. In paragraph (a) introductory text, add the text “(c)” following the text, “§ 4.03-1”.
- c. In paragraph (a)(2), remove the text “a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;”, and add, in its place the text, “, which renders the individual unfit to perform routine duties;”.
- d. In paragraph (a)(4), add the text “, floating OCS facility, or MODU” following the text “vessel”.

15. Revise § 4.03-65(c)(1), (6), and (7), to read as follows:

#### **§ 4.03-65 Significant harm to the environment.**

\* \* \* \* \*

(c) \* \* \*

(1) Vessel, floating OCS facility, or MODU location and proximity to land or other navigational hazards;

\* \* \* \* \*

(6) The nature of damage to the vessel, floating OCS facility, or MODU; and

(7) Failure or breakdown aboard the vessel, floating OCS facility, or MODU, its machinery, or equipment.

16. Add § 4.03-80 to read as follows:

**§ 4.03-80 Outer Continental Shelf (OCS).**

*Outer Continental Shelf* or *OCS* means all submerged lands lying seaward and outside of the area of “lands beneath navigable waters” as defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

17. Add § 4.03-85 to read as follows:

**§ 4.03-85 OCS Activity.**

*OCS activity* means any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.

18. Add § 4.03-90 to read as follows:

**§ 4.03-90 Floating OCS facility.**

*Floating OCS facility* means a U.S. or foreign buoyant OCS facility that is dynamically positioned on location or securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms and permanently moored semisubmersibles or shipshape hulls, but does not include mobile offshore drilling units and other vessels, as defined in 33 CFR part 140.

19. Add § 4.03-95 to read as follows:

**§ 4.03-95 Mobile Offshore Drilling Unit (MODU).**



*Mobile offshore drilling unit* or *MODU* means a vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources.

20. Revise the heading of subpart 4.04 to read as follows:

**Subpart 4.04—Notice of Potential Casualty**

21. Revise § 4.04-1 to read as follows:

**§ 4.04-1 Reports of potential casualty.**

(a) An owner, charterer, managing operator, or agent of a vessel, floating OCS facility, or MODU to which this part applies must immediately notify either of the following Coast Guard officers if there is reason to believe the vessel, floating OCS facility, or MODU is lost or imperiled:

(1) The Coast Guard district rescue coordination center (RCC) cognizant over the area the vessel, floating OCS facility, or MODU was last operating; or

(2) The Coast Guard search and rescue authority nearest to where the vessel, floating OCS facility, or MODU was last operating.

(b) Reasons for belief that a vessel, floating OCS facility, or MODU is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel, floating OCS facility, or MODU.

22. Revise § 4.04-3 to read as follows:

**§ 4.04-3 Reports of lack of communication**

The owner, charterer, managing operator or agent that is required to report to the United States Flag Merchant Vessel Location Filing System under the authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), must immediately notify the Coast Guard if more than 48 hours have passed since receiving communication. This notification must be given to the Coast Guard district RCC cognizant over the last known operating area.

23. Amend § 4.04-5 by revising the introductory paragraph and paragraph (a) to read as follows:

**§ 4.04-5 Substance of reports.**

The owner, charterer, managing operator or agent, notifying the Coast Guard under § 4.04-1 or § 4.04-3, must:

(a) Provide the name and identification number of the vessel, floating OCS facility, or MODU, the names of the individuals on board, and other information that may be requested by the Coast Guard (when providing the names of the individuals on board for a passenger vessel, the list of passengers need only meet the requirements of 46 U.S.C. 3502); and

\* \* \* \* \*

**§ 4.05-1 [Amended]**

24. Amend § 4.05-1 by:

- a. Revising the introductory text of paragraph (a);
- b. In paragraphs (a)(2) and (a)(3), adding the text “, floating OCS facility, or MODU” following the text, “vessel”;
- c. In paragraph (a)(4), after the text “adversely affecting”, removing the text “the vessel’s”; and
- d. Revising paragraph (a)(6).

The revisions read as follows:

**§ 4.05-1 Notice of Marine Casualty.**

(a) Immediately after addressing resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify any one of the nearest Coast Guard units, to include Sector, Marine Safety Office, Coast Guard District or Area Offices, whenever a vessel, floating OCS facility or MODU to which this part applies is involved in a marine casualty consisting in—

\* \* \* \* \*

(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel, floating OCS facility, or MODU in commercial service, that renders the individual unfit to perform their routine duties; or

\* \* \* \* \*

25. Revise § 4.05-5 to read as follows:

**§ 4.05-5 Substance of marine casualty notice.**

The notice required in § 4.05-1 must include the name and official number of the vessel, floating OCS facility, or MODU involved, the name of the owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

26. Revise § 4.05-15(a) to read as follows:

**§ 4.05-15 Voyage records, retention of.**

(a) The owner, agent, master, or person in charge of any vessel, floating OCS facility, or MODU involved in a marine casualty must retain such voyage records as are normally maintained, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

\* \* \* \* \*

27. Revise § 4.05-20 to read as follows:

#### **§ 4.05-20 Report of accident to aid to navigation.**

Whenever a vessel, floating OCS facility, or MODU collides with a buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the person in charge must report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG-2692 is required unless one or more of the results listed in §4.05-1 occur.

28. Revise the heading of subpart 4.06 to read as follows:

#### **Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels, Floating OCS Facilities, or MODUs in Commercial Service**

29. Amend § 4.06-1 by revising paragraphs (b) and (e) to read as follows:

#### **§ 4.06-1 Responsibilities of the marine employer.**

\* \* \* \* \*

(b) When a marine employer determines that a casualty or incident is, or is likely to become, a serious marine incident, the marine employer must take all practicable steps to have each individual engaged or employed on board the vessel, floating OCS facility, or MODU who is directly involved in the incident chemically tested for evidence of drug and alcohol use as required in this part.

\* \* \* \* \*

(e) The marine employer must ensure that all individuals engaged or employed on board a vessel, floating OCS facility, or MODU are fully indoctrinated in the requirements of this subpart, and that appropriate vessel personnel are trained as necessary in the practical applications of these requirements.

#### **§ 4.06-3 [Amended]**

30. Amend § 4.06-3 in paragraphs (a)(1) introductory text and (b)(1) introductory text, by adding the text “, floating OCS facility, or MODU” following the text, “vessel”.

31. Amend § 4.06-5 by revising paragraphs (a) and (b) to read as follows:

**§ 4.06-5 Responsibility of individuals directly involved in serious marine incidents.**

(a) Any individual engaged or employed on board a vessel, floating OCS facility, or MODU who is determined to be directly involved in an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide a blood, breath, saliva, or urine specimen, this refusal must be noted on Forms CG-2692 and CG-2692B and in the vessel's official log book, if a log book is required. The marine employer must remove the individual as soon as practical from duties that directly affect the safe operation of the vessel, floating OCS facility, or MODU.

\* \* \* \* \*

32. Amend § 4.06-15 by:

- a. In paragraphs (a)(1), (a)(3), and (b)(2), adding the text “, floating OCS facility, or MODU” following the text, “vessel”; and
- b. Adding paragraph (b)(3).

The addition reads as follows:

**§ 4.06-15 Accessibility of chemical testing devices.**

\* \* \* \* \*

(b) \* \* \*

(3) The owner, operator, or person in charge of a foreign vessel, floating OCS facility, or MODU who is unable to meet the drug testing requirements of 49 CFR part 40 may request approval for an alternative drug testing process from the U.S. Coast Guard Drug and Alcohol Prevention and Investigation Program Manager via email at *DAPI@USCG.MIL*.

**§ 4.06-30 [Amended]**

33. In § 4.06-30 amend paragraph (a) by adding the text “, floating OCS facility, or MODU” following the text, “vessel” in the first sentence.

34. Revise § 4.06-60(a) to read as follows:

**§ 4.06-60 Submission of reports and test results.**

(a) Whenever an individual engaged or employed on a vessel, floating OCS facility, or MODU is identified as being directly involved in a serious marine incident, the marine employer must complete Form CG-2692B (Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service).

\* \* \* \* \*

**§ 4.07-45 [Amended]**

35. In § 4.07-45, add the text “, floating OCS facility (facilities), or MODU(s)” following the text, “vessel(s)”.

**PART 109—OPERATIONS**

36. The authority citation for part 109 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

37. Revise § 109.411 to read as follows:

**§ 109.411 Notice and reporting of casualty.**

The owner, operator, or person in charge of a MODU regulated under this part must provide notice and report marine casualties in accordance with 46 CFR part 4.

Dated: June 4, 2023.

LINDA FAGAN,  
Admiral, U.S. Coast Guard,  
Commandant.

